

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 826 OF 2015

THE RELIANCE GENERAL INSURANCE COMPANY
VERSUS
RAJAMATI BHAGWAN KANDE AND OTHERS

...
Advocate for Appellant : Mr. S.G. Chapalgaonkar
Advocate for Respondents 1 to 5 : Mr. T.G. Gaikwad
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CORAM : V. K. JADHAV, J.
DATED : 22nd MARCH, 2017

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. Being aggrieved by the judgment and award dated 8.5.2014 passed by the Member, M.A.C.T. Ambajogai, in M.A.C.P. No. 108 of 2011, the original respondent No.2 has preferred this appeal.
3. Brief facts giving rise to the present appeal are as follows:-
 - a) On 11.9.2011, deceased Bhagwan was proceeding from Parali to Pune. On Ahmednagar to Pune State Highway, within the limits of village Saradwadi, near Siddharth Petrol pump, when deceased Bhagwan was crossing the said road, one Innova car bearing registration No. MH-17-T-4000 came from Nagar side, in high speed and gave dash to deceased Bhagwan. In consequence of which

deceased Bhagwan died on the spot.

b) The claimants/legal representatives of deceased Bhagwan approached the Tribunal by filing M.A.C.P. No. 108 of 2011 for grant of compensation under various heads. It has been contended that deceased Bhagwan was serving in Agriculture Produce Market Committee, on monthly salary of Rs.11,130/- and he was 35 years of age at the time of his accidental death. The claimants were entirely depending upon his income.

c) The respondent No.1 owner has failed to appear before the Tribunal though duly served. Thus, hearing of the claim petition ordered to be proceeded exparte against her. The appellant insurer has strongly resisted the claim petition by filing written statement at Exh.15. It has been contended that the deceased himself was at fault and the driver of the Innova car was not at fault.

d) The claimants have adduced oral as well as documentary evidence in support of their contentions. The appellant insurer has not adduced any evidence. The learned Member of the Tribunal by judgment and award dated 8.5.2014 has directed the appellant and respondent No.1 owner to pay jointly and severally an amount of Rs.16,32,816/- alongwith interest @ 6% p.a. from the date of

application till realization of the amount. Hence, this appeal.

4. Learned counsel for appellant-insurer submits that deceased Bhagwan was entirely responsible for the accident. Even Tribunal has not considered that deceased Bhagwan had contributed negligence to some extent. He was crossing the State Highway without taking due care and caution. Duty is also cast on the pedestrian while crossing the busy State Highway. Deceased Bhagwan suddenly crossed the road without taking note of approaching Innova car and thus accident had taken place. Though claimants have examined Secretary of A.P.M.C. to prove the contents of salary certificate Exh.32, said certificate has been given on letter pad of A.P.M.C. and salary slip is not produced before the court. Consequently, the deductions in salary on account of various factors have not been shown. Net salary of deceased Bhagwan is required to be considered for determination of compensation. Learned counsel submits that even though deceased Bhagwan was employed with A.P.M.C., though documentary evidence was available in respect of his age, the claimants have not produced the same before the Tribunal and Tribunal constrained to consider his age on the basis of post mortem report and other police papers. Learned counsel submits that deceased Bhagwan was more than 35 years of age at the time of his accidental death and therefore, the

relevant multiplier would be 15 instead of 16. Learned counsel in order to substantiate his submissions, placed reliance on the judgments in following two cases:-

- I. Koosappa Poojari vs. K. Sadabba, reported in 2004 ACJ 2102,
- ii. Mahadeo Hari Lokre vs. The State of Maharashtra, reported in AIR 1972 SC 221

5. Learned counsel for the respondents-claimants submits that the appellant-insurer has not adduced any evidence to substantiate its defence. The claimants have adduced evidence about happening of accident and the same is not disputed by the appellant-insurer. The claimants have also produced on record the police papers to substantiate their case about happening of accident and those documents are duly accepted before the Tribunal.

6. Respondent No.1 owner has failed to appear before the Tribunal though duly served. The claimants have proved the happening of accident and as such by application of maxim *res ipsa loquitur*, burden shifts on other side to prove negligence on the part of deceased if the contention is raised to that effect. Learned Member of the Tribunal has considered the situation on the spot of

accident and rightly held that the driver of Innova car alone was responsible for the accident and none else. Learned counsel submits that the claimants have examined Secretary of A.P.M.C. to prove the contents of salary certificate of deceased Bhagwan. Even if it is considered that certain deductions are not shown in the said certificate Exh.32, the same would not cause any prejudice to the defence raised by the appellant-insurer. The last drawn salary of deceased Bhagwan is required to be considered for determination of compensation by applying relevant multiplier. In the instant case, the Tribunal has considered the age of deceased on the basis of post mortem report and other papers and accordingly awarded just and reasonable compensation. No interference is required.

7. On careful perusal of pleadings, evidence and the judgment and award passed by the Tribunal, it appears that the Tribunal has rightly held that the driver of Innova car alone was responsible for the accident. It is true that deceased Bhagwan was crossing the road at the relevant time. The road at the spot of accident is east-west in direction. The offending Innova car was going from Nagar to Pune i.e. from eastern side to western side. Thus for the vehicle going from eastern side, south side of the road would be the correct left side. Learned Member of the Tribunal by relying on the contents of spot panchnama has observed that the said Innova Car gave dash to

deceased Bhagwan by coming to the northern side of the road. The learned Member of the Tribunal has also observed that at the spot of accident, by both sides of the road, there are hotels, tyre repairing shops and also one petrol pump. Thus, the duty is cast on the drivers of motor vehicles to drive their vehicles in moderate speed while passing the road, which is surrounded by hotels, petrol pump and shops. It has been observed that the dash was so severe that deceased Bhagwan died on the spot. Thus only irresistible inference could be drawn that driver of Innova car had driven the said car in fast, excessive and uncontrollable speed.

8. In the case of ***Koosappa Poojari vs. K. Sadabba (supra)***, relied upon by learned counsel for the appellant, the Karnataka High Court considered the duties cast on the pedestrian while crossing the road. In the facts of said case, the Karnataka High Court has observed that there is no evidence to show that it was the pedestrian crossing or whether there was any zebra crossing. In the facts of said case, the road where the accident had taken place was National Highway and accordingly Karnataka High Court has made the said observations. In the instant case, no such contingency occurred. Deceased Bhagwan was crossing the State Highway and no place is earmarked as such for the pedestrian intending to cross the road at the spot of accident.

9. In the case of ***Mahadeo Hari Lokre vs. The State of Maharashtra (supra)***, relied upon by learned counsel for the appellant, the Supreme Court has held negligence on the part of pedestrian in criminal case. The appreciation of evidence in criminal trial is altogether different.

10. Learned Member of the Tribunal has rightly considered that driver of Innova Car was at fault and accordingly recorded the finding to that effect. No interference is required.

11. So far as income of deceased Bhagwan is concerned, the Tribunal has rightly considered the last pay drawn by deceased Bhagwan and on that basis determined the compensation. So far as application of multiplier is concerned, even though the documentary evidence was available in respect of age of deceased, the claimants failed to adduce the same before the Tribunal. Even considering the age of widow and the children of deceased Bhagwan, an inference could be drawn that deceased Bhagwan was above the age of 35 years at the time of his accidental death. His age is approximately considered on the basis of post mortem report and other police papers. In view of the same, relevant multiplier would be 15 instead of 16 as considered by the Tribunal. Thus, the impugned judgment

and award passed by the Tribunal is required to be modified to that extent. By applying the multiplier 15, the claimants would be entitled for compensation of Rs.15,02,640/- instead of Rs.16,32,816/-. Hence, I proceed to pass the following order:-

O R D E R

- I. The first appeal is hereby partly allowed. No costs.
- II. The judgment and award passed by the Member, M.A.C.T. Ambajogai, dated 8.5.2014 in M.A.C.P. No. 108 of 2011 is hereby modified in the following manner:-

“The original respondent Nos. 1 and 2 jointly and severally do pay an amount of Rs.15,02,640/- (Rupees Fifteen lacs two thousand six hundred forty only) to the claimants with interest @ 6% p.a. from the date of petition till realization of entire amount”.

- III. Rest of the judgment and award stands confirmed.
- IV. The award be drawn up as per the above modification.
- V. If the amount is deposited before this court as per the

award passed by the Tribunal, the claimants are entitled to withdraw the amount as per the modified award and rest of the amount shall be refunded to the appellant-insurer.

VI. First appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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