

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

13 FIRST APPEAL NO. 2710 OF 2016

1. Smt. Anita Nitin Dawne
Age : 27 years, Occu : Household,
2. Kum. Aniket Nitin Dawne
Age : 4 years, Occu : Nil,
Minor through his legal guardian
Appellant No.1 – Mother
3. Keshav Gangaram Dawne
Age : 72 years, Occu : Pensioner
4. Radhabai Keshav Dawne
Age : 65 years, Occu : Household

All R/o. House No.877, Deonagari,
Khalewadi, Bhingar, Dist. Ahmednagar

.. Appellants
(Orig. Claimants)

VERSUS

1. Ramesh Govindrao Bhusa
Age : Major, Occu : Service,
R/o. 705, Tophkhana,
Pardeshi Galli, Dist. Ahmednagar
2. Manager Saheb,
Royal Sundaram Alliance Insurance
Company Ltd.,
46, Whites Road, Chennai – 600 014,
Tamilnadu.

.. Respondents
(Orig. Respondents)

...

Advocate for Appellants : Mr. D.R. Jethliya &
Ms. Sonal D. Jethliya

Advocate for Respondent No.2 : Mr. A.S. Deshpande

...

CORAM: P. R. BORA, J.

DATE : 19TH JUNE, 2017.

Oral Judgment :

. Heard finally with the consent of the parties.

2. The present appeal is filed against the Judgment and Award passed by the Motor Accident Claim Tribunal at Ahmednagar on 22.04.2015 in Motor Accident Claim Petition No.142/2013.

3. The present appellants had filed the aforesaid petition claiming compensation on account of death of one Nitin Dawne alleging the same to have been caused because of the injuries caused to deceased Nitin Dawne in a vehicular accident happened on 27.11.2010 having involvement of Maruti Wagon-R bearing registration No. MH-16-AB-3386 owned by present respondent no.1 and insured with present respondent no.2. It was the contention of the appellants that, deceased Nitin Dawne received several injuries in the vehicular accident happened on 27.11.2010. According to the case of the appellants, the vehicle through which the deceased was travelling at the relevant time turned turtle and entire weight was thrust on the stomach of the deceased because of which severe damage was caused to deceased's abdominal

portion. It was the further contention of the appellants that, deceased was treated in at least 4 to 5 different hospitals and ultimately, suffered the death in Cigma Hospital at Aurangabad while under treatment on 21.06.2011. It was the assertion of the appellants that, deceased Nitin suffered death because of the injuries caused to him in the alleged accident.

4. The learned Tribunal, however, has recorded a finding that, the appellants have failed to prove that Nitin died as a result of injuries caused to him in the alleged accident. Shri. Jethliya the learned Counsel appearing for the appellants submitted that, though sufficient evidence was adduced before the Tribunal to substantiate the contention that, the deceased suffered death because of the injuries caused to him in the alleged accident, the Tribunal has failed in appreciating the said evidence and has recorded a wrong finding that, the appellants did not prove that, deceased Nitin died as a result of the injuries caused to him in the alleged accident.

5. The learned Counsel further submitted that, all complications were developed after the occurrence of the accident. The learned Counsel further submitted that, deceased did not have cancer before the occurrence of the accident and the same was developed only after the occurrence of the accident and because of the severe injuries caused to the liver of deceased. Learned Counsel submitted that, the Tribunal has therefore manifestly erred in not awarding any amount towards the

dependency compensation. The learned Counsel further submitted that, since the very basic issue was answered against the appellants, the Tribunal has not considered entitlement of the appellants for non pecuniary damages also. The learned Counsel submitted that, the impugned award therefore needs to be set aside and having regard to the evidence on record, the just and fair amount of compensation requires to be determined by this Court in the present appeal.

6. In the alternative Shri Jethliya submitted that, the opportunity may be given to the appellants to lead a necessary evidence to substantiate their contention and for that purpose, to remit back the matter to the Tribunal.

7. Shri Deshpande the learned Counsel appearing for the respondent - Insurance Company supported the impugned Judgment and Award. The learned Counsel submitted that, the Tribunal has rightly appreciated the evidence on record and has recorded a correct finding that the appellants / orig. claimants have failed in proving that, deceased Nitin died as a result of injuries caused to him in the alleged accident. The learned Counsel submitted that, Dr. Umesh Kulkarni who was examined as a witness by the appellants in his cross - examination before the Tribunal has categorically admitted that, when deceased Nitin was brought in Cigma Hospital, he was suffering from cancer and ultimately he died because of cancer. The learned Counsel submitted that, since there was no concrete or conclusive evidence

brought on record by the appellants, the finding recorded by the Tribunal cannot be faulted with and the Award so passed by the Tribunal does not call for any interference.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the evidence as well as other material available on record. It is apparently noticed that, the evidence as has been brought on record by the appellants was insufficient and the appellants should have produced on record some more concrete evidence in order to substantiate their contention. The record reveals that, deceased was treated in several hospitals and Cigma hospital was the last hospital wherein he was admitted just prior to one day of his death. Considering the aforesaid facts, the evidence of Dr. Umesh Kulkarni cannot be of much help for the appellants to prove their contention as about the cause of death because of which deceased Nitin ultimately suffered death. When it is the contention of the appellants that, deceased suffered serious injuries to his liver which ultimately culminated into causing him cancer which became the cause for his death, the appellants must have placed on record the entire said evidence. Admittedly, no such concrete evidence is there on record.

9. It has been argued that the claimants cannot be permitted to fill up the lacuna. However, having regard to the fact that the present appeal is arising out of the provisions of Motor Vehicles Act, which is a welfare legislation, it would be

wholly unjust and improper to dispose of the present appeal merely observing that since no sufficient evidence was adduced by the claimants, no error can be seen in the finding recorded by the Tribunal on the point of cause of the death of deceased. The material on record reveals that deceased Nitin was treated at 2 – 3 hospitals prior he was brought to Ciigma Hospital. It is evident from the record that after the accident deceased was continuously under treatment and was almost bed-ridden. There is reason to believe that all subsequent ailments and complications suffered by the deceased were because of the injuries received to the deceased in the alleged accident. In the circumstance to give an opportunity to the claimants to examine the relevant witnesses to legally prove the facts which are already on record, in my opinion may not amount to feeling of lacuna. I, therefore, deem it appropriate to remit back the matter to the Tribunal with permission to the appellants to lead the necessary evidence more particularly the medical evidence in order to substantiate their contention that deceased Nitin died as a result of injuries caused to him in the alleged vehicular accident. Needless to state that, the respondents will have equal opportunity to rebut the said evidence, which may be adduced by the appellants and it would also be open for the respondents to adduce any other evidence in support of the defence so raised by them. In that view of the matter, the following order is passed.

ORDER

1. The impugned Award is set aside.

2. The matter is remitted back to the Motor Accident Claim Tribunal at Ahmednagar with a direction that, it shall permit the appellants / orig. claimants to adduce additional evidence more particularly the medical evidence to substantiate their contention about the cause of death of deceased. Needless to state that, the respondents will have equal opportunity to rebut the evidence which may be adduced by the appellants and to cross - examine the witness which may be examined by the appellants / orig. claimants. It would also be open for the respondents to adduce evidence, if any, on their behalf in order to substantiate the defences raised by them.

3. The Tribunal to decide the matter by giving due opportunities to the parties as expeditiously as possible and preferably within a period of six months.

4. First Appeal stands disposed of in above terms.

5. Pending Civil Application, if any, stands disposed of.

[P. R. BORA, J.]

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