IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.62 OF 1989
WITH
CIVIL APPLICATION NO.937 OF 2003
IN
FIRST APPEAL NO.62 OF 1989

Shri.Shankarrao Anandrao Bhagat ..Appellant/Applicant
V/s.
Shri.Dhondiba Mahipati More & Ors. ..Respondents

Mr.Ranjit Bhosale i/by Ms.Kirti H. Purohit for the Appellant/Applicant.

Mr.Amit Sale for Respondent Nos.1 to 4, 5-B and 5-C.

CORAM : M. S. SONAK, J.

DATE : 01 MARCH 2017.

P.C.

1. Heard the learned counsel for the parties.

2. The challenge in this appeal is to the judgment and award dated 18 January 1988, the operative portion of which reads thus :-

> *"The Petition is partly allowed.*
>
> *The Opponents Nos.1 and 2 do pay compensation of Rs.43,400 to the Petitioners together with proportionate costs and interest at 10 percent per annum*

from the date of the deceased i.e. 09th August 1984. Opponents Nos.1 and 2 shall deposit said amount in the Court within three months from the date of award, else the interest would run at the rate of 18 per cent per annum from the date of default."

As per order dated 28th November 1985 a sum of Rs.1,527 is already deposited by Opponent No.4 in the Court at C.No.219 on 08th January 1986 and hence the amount is liable to be refunded to Opponent No.4. After the total amount of Rs.43,400/- together with proportionate costs and interest is deposited by Opponents Nos.1 and 2, a sum of Rs.15,227/- be directly paid to Opponent No.4 by crossed cheque drawn on the State Bank of India, Treasury Branch, Solapur. In case if Opponents Nos.1 and 2 did not deposit the said amount in the Court within the time stated above, Opponent No.4 is at liberty to recover the said amount of Rs.15,227/- from the Petitioners with interest at the rate of 10 percent per annum from the date of default, i.e. in case the said amount is not deposited by Opponents Nos.1 and 2 in the Courts within three months from the date of the award.

After deducting the amount of Rs.15,727 from the amount of Rs.43,400/- a sum of Rs.2,673 be paid to Petitioner No.1 together with the amount of costs and interest by crossed cheque drawn on the State Bank of India, Treasury Branch, Solapur and a sum of Rs.5,000/- be kept in fixed deposit in the State bank of India, Akluj Branch on joint names of Petitioners Nos.2 and 1 for a *period of six years and Petitioners No.2 is entitled to receive the amount of interest on the said amount.*

A sum of Rs.20,000/- is awarded to Petitioner No.3 Lata w/o Gunwant More separately and out of the said amount, a sum of Rs.500/- be paid to her by crossed cheque drawn on the State Bank of India, Treasury Branch, Solapur, and the balance of Rs.15,000/- be kept in the State Bank of India, Akluj Branch, on the name of Petitioner No.3, in fixed deposit for a period of six years and she is entitled to receive the amount on the said amount.

The Petitioners petition for compensation against Opponents Opponent Nos.3 and 4 is hereby dismissed.

The Opponents shall bear their own costs.

A copy of the final order be sent to the Manager, State Bank of India, Akluj Branch, Akluj, for information and necessary action."

3. Mr.Ranjit Bhosale, the learned counsel for the appellant submits that there is no evidence on record to establish that the driver of the vehicle was negligent. In absence of any such evidence, there was no question of making appellants, who is the owner of the vehicle, liable for payment of any compensation. Mr.Bhosale submits that the evidence on record makes out a case that the deceased Gunwant More was travelling in the truck which met with an accident along with two Jowar bags which he was

transporting to his village. Mr.Bhosale submits that merely because a person is travelling along with his goods in a goods vehicle, it cannot be said that such a person is a gratuitous passenger or that there is any breach of any essential terms of the Insurance Policy. Mr.Bhosale submits that in these circumstances, the Insurance Company ought not to have been absolved of the liability for the payment of compensation.

4. Mr.Bhosale, further submits that quantum of compensation determined is quite excessive. The material on record indicates that the deceased had no regular job and therefore, the compensation amount could not have been Rs.43,400/-. In any case, Mr.Bhosale submits that this was not a fit case to award interest at the rate of 10% per annum or to award interest at the rate of 18% per annum as an by way of default interest. Mr.Bhosale also submits that the claimants seek to compute this interest on compounded basis, which is also not correct, since, what is awarded is only simple interest.

5. Mr.Amit Sale, the learned counsel who appears for the repondents-claimants submits that there is clear evidence of negligence on the part of the driver of the truck in which Gunwant

was travelling. He further submits that the theory that Gunwant was travelling along with his goods i.e. two Jowar bags has neither been supported by the driver in the course of his cross-examination nor is there any other independent evidence to support this theory. On this basis, Mr.Sale states that it is the owner who is liable and not the Insurance Company. On the aspect of quantum of compensation, Mr.Sale submits that what has been awarded is just and proper and there is no case made out to interfere with the same.

6. The Insurance Company, though served, is not represented at the stage of final hearing.

7. On the aspect of negligence, there is ample evidence on record to establish that the accident has taken place on account of the driver of the truck, who was driving the truck in rash and negligent manner. The deposition of the driver, hardly inspires any confidence. The driver has stated that while he was driving the truck he found that steering wheel of the truck was broken and the truck started going towards the left side. The driver has stated that Gunwant panicked and tried to jump out of the cabin of the truck. Ultimately, the truck dashed against the tree and Gunwant was found beneath the truck. There is no independent evidence on the

aspect of any mechanical failure. The theory that Gunwant jumped out of the truck was not even stated in the written statement. The driver has admitted that he ran away from the site of the accident. The MACT has analyzed the evidence on record in its proper perspective and returned the finding that the accident was on account of negligence of the driver and there is no warrant interfere with these findings.

8. Insofar as the contention that Gunwant was travelling along with his goods i.e. two Jowar bags are concerned, the respondents-claimants, have not supported this version. The owner, who has deposed in this matter, has also not deposed anything upon this aspect. The driver, however, in his examination-in-chief has come out with this theory. The driver has stated that when he took the truck out of the gate of the sugar factory, Gunwant More boarded the said truck. The driver has deposed that Gunwant told him that he wanted to go to Dharmapuri and therefore, he entered into the cabin of the truck. The driver has deposed that Gunwant was having small bundles of Jowar. The driver also deposed that he told Gunwant not to sit in the truck, but Gunwant replied that he had some difficulties at his residence and therefore he wanted to take the Jowar bags his residence. He also deposed that Gunwant

told him that he would pay at Rs.5 as the charges for carrying the bundles of Jowar. In the cross-examination, however, the driver admitted that he had not made any statement in the written statement as regards to the payment of Rs.5/- for carrying the bundle of Jowar. Further, the driver, categorically admitted that he was carrying Gunwant as a gratuitous passenger in the truck to Dharmapuri.

9. The case of the respondents-claimants is that opponent no.3, who was also one of the officers of the sugar factory directed Gunwant to travel by the said truck. This version is supported by the security personnel at the gate of the sugar factory. In the light of such material on record, it cannot be said that Gunwant was carrying goods in the truck and his presence was only incidental and therefore, the same does not constitute any fundamental breach of the terms of the Insurance Policy.

10. Mr.Bhosale, place reliance upon the following decisions:-

(1) Oriental Insurance Co. Ltd. V/s. Ashok Ramvilasji Vyas & Ors. [2004(4) ALL MR 100].

(2) Nasibdar Suba Fakir V/s. Adhia & Company &

Ors. [1983 Mh.L.J-647].

(3) Shivraj Vasant Bhagwat V/s. Shevanta Dattaram Indulkar & Another [1997(1) Mh.L.J.-175].

This was in support of the contention that the Insurance Company cannot escape liability unless fundamental breach of the terms of the Insurance policy is established. Mr.Bhosale submits that mere irregularity is not sufficient to absolve the liability of the Insurance Company.

11. However, the aforesaid decisions are not applicable to the facts and circumstances of the present case. In some of these decisions, the person who was injured or who died was travelling along with goods in a goods vehicle. In one of the cases, there was a passenger vehicle but the limit as to the number of passengers was exceeded. It is in these circumstances that it was held that these were mere irregularities on the basis of which the Insurance Company could not have been absolved. In the present case, however, we are concerned with the goods vehicle and the driver has admitted that the deceased was a gratuitous passenger. In these circumstances, the judgments relied upon by Mr.Bhosale, cannot assist the appellant.

12. Mr.Bhosale, however, is right in his submission that in default the interest component is really excessive in the facts and circumstances of the present case. The deceased was a gratuitous passenger in the goods vehicle as per the evidence on record. The deceased was residing at Dharmapuri and it is possible that he wanted a lift upto his village. The Insurance Company has been absolved of all the liability. In such a situation, to require the truck owners, at this point of time, to pay in default interest at the rate of 18% per annum will be quite harsh. Accordingly, interest in default at the rate of 18%, is hereby set aside. This means that the compensation shall have to be paid with interest at the rate of 10% per annum from 09-08-1984 until the date of effective payment. Further, it is clarified that this shall be simple interest and not compound interest.

13. In pursuant to the order made by this Court, the appellant's have already deposited a sum of Rs.1 lakh in this Court. Registry shall pay this amount of Rs.1 lakh by way of a demand draft drawn in the name of Lata Gunwant More, the widow of deceased Gunwant. To that extent, the impugned award is further modified. Insofar as the balance amount is concerned, the claimants are jointly and severally entitled to execute the impugned award as

modified now. The modification is basically in the matter of default interest and it is again clarified that the interest awarded is only simple interest and not compound interest.

14. The appeal is partly allowed to the aforesaid extent only. There shall be no order as to costs.

15. In view of the disposal of the appeal, the Civil Application stands disposed of.

(M. S. SONAK, J.)