IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.143 OF 2003

Mr. Damodar Nair and another ...Appellants
vs.
Shri Prakash Parashram Kshirsagar & Ors. ...Respondents

WITH
FIRST APPEAL NO.144 OF 2003

Mr.Thomas Erapukushy and another ...Appellants
vs.
Shri Prakash Parashram Kshirsagar and others ...Respondents

Mr. Ketan Chothani a/w Mr. Rohan Bhaije i/b Mr. M. G. Barve for the Appellants in both First Appeals.
Mr. G. S. Hegde i/b M/s. G. S. Hegde & Associates for the Respondent No.4.

CORAM: C. V. BHADANG, J.

DATE: May 26, 2017.

ORAL JUDGMENT:

. Both these Appeals involve claim for compensation arising out of the same accident. As such they are being disposed of by this common judgment.

2. The facts necessary for the disposal of the Appeals may be stated thus:

That in all five persons met with death in a vehicular accident which occurred on 1/12/1991 at about 5.50 p.m. on Vita-Karad road, near Dhavaleshwar Phata. The accident involved a jeep bearing No.MH-10/8118 and ST Bus bearing No.MH-12/F-3065. In all 5 claim petitions were filed by the dependents of the deceased before the Motor Accident Claim Tribunal at Sangli (for short 'Tribunal') being MACP No.29/1992, MACP No.118/1992, MACP No.160/1992, MACP No.189/1992 and MACP No.200/1992. The present First Appeal No.143/2003 arises out of MACP No.189/1992 in which a compensation of Rs.55,000/- (inclusive of no fault liability) along with interest has been granted against the Respondent Nos.1 and 2, who are respectively the driver and the owner of the jeep. A similar award is made in MACP No.200/1992, which is the subject matter of challenge in First Appeal No.144/2003. The Tribunal has decided all the five petitions by common judgment and award dated 3/7/2001.

3. I have heard Mr. Ketan Chothani, the learned counsel for the Appellant. None appears for the Respondent. With the assistance of the learned counsel for the Appellant, I have perused the record and the impugned judgment passed by the learned Tribunal.

4. It is submitted by the learned counsel for the Appellant that the Tribunal was in error in coming to the conclusion that there was a breach of policy condition. He submitted that the Tribunal could not have absolved the insurer of the jeep. It is next submitted that the Tribunal also erred in holding that the accident occurred solely due to the rash and negligent driving of the driver of the jeep.

5. The learned counsel for the Appellant submitted that the accident was a result of composite negligence of drivers of both the vehicles. In the alternative, it is submitted that the Tribunal ought to have passed an order in the nature of 'pay and recover'. In other words, the Tribunal ought to have directed the insurance company to pay/deposit the amount, subject to a right of recovery from the owner of the jeep. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of (i) ***Manuara Khatun & Ors. vs. Rajesh Kr. Singh & Others, Civil Appeal No.3047/2017,*** (ii) ***Manager, National Insurance Co. Ltd. vs. Saju P. Paul and Another, 2013 (2) SCC 41*** and (iii) decision of this Court in ***United India Assurance Co. Ltd. vs. Sindhubai Darwante and Ors., 2010(3) Mah. L. J. 886.***

6. The learned counsel for the Appellant has also taken exception to the quantum of compensation awarded. It is submitted that the Tribunal could not have reckoned income at the rate of Rs.15,000/- p.a. It is also submitted that on account of mental shock and agony the Tribunal could not have refuted the compensation in MACP No.189/1992 on the ground that it cannot be granted on the basis of evidence of the General Power of Attorney holder of the claimants.

7. I have carefully considered the circumstances and the submissions

made. Firstly, it would be necessary to see whether this is a case of composite negligence of the drivers of the jeep and the ST bus. The drivers of both the vehicles were examined before the Tribunal and the Tribunal has elaborately considered the evidence of these witnesses in the context of the circumstances appearing from the spot panchanama. The reasoning in this regard can be found in paragraph Nos.21 to 23 of the impugned judgment. I have carefully gone through the same and I do not find that a different view can be taken. The Tribunal has rightly found that it was the driver of the jeep who was at fault in attempting to overtake the tempo. The driver of the ST bus had tried to avoid the impact by taking the ST bus to extreme left side. There were brakes/tyre marks found on the spot. It has rightly been found that there was no damage to the left side of the bus and it was the jeep driver, who while overtaking the tempo went to the wrong side and dashed the bus.

8. In my considered view the learned Tribunal has rightly accepted the evidence of Madhukar Shinde than the evidence of Prakash Kshirshagar. Thus, no exception can be taken to the finding recorded by the learned Tribunal holding that the accident was a result of rash and negligent driving of the jeep. Thus, the learned Tribunal has rightly absolved the Respondent No.4.

9. This takes me to the question of breach of policy conditions. The

Tribunal has dealt with this aspect from paragraph 28 onwards. As per the statement of the driver of the jeep, he was knowing the deceased Nair as he was running a puncture repairing shop. He claimed that the deceased Thomas was also known to him as Mr. Thomas used to be in the shop of Mr. Nair. He also claimed that he was knowing the rest of the occupants as they were on visiting terms with the owner. The injured and the deceased asked for a lift from Panchayat Samiti at Vita. He admitted that the jeep was not having a permit to carry passengers. The Tribunal has refused to accept the evidence of this witness on the ground that the occupants were not related or known to the owner as the owner is from Nerli and the occupants were from different villages. After having carefully gone through the evidence and the finding recorded, I do not find any reason to take a different view. Thus, it cannot be accepted that the deceased were gratuitous passengers. The question is whether insurance company can be directed to pay/deposit the compensation subject to right of recovery from the owner.

10. The learned Single Judge of this Court in the case of ***United India Assurance Co. Ltd. (cited supra)*** has inter alia held that in appropriate cases the Tribunal has jurisdiction to direct the Insurance Company to pay/deposit the compensation subject to right to recover from the owner. The Hon'ble Supreme Court in a recent decision in the case of ***Manuara Khatun & Ors. (cited supra)*** has also taken a similar view. It may be significant to note that the case of ***United India Assurance Co.***

Ltd. (cited supra) also involved a claim for compensation in respect of a fare paying passenger and same course can be adopted in this case. This takes me to the question of quantum which will have to be considered individually in each case.

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11. The deceased Gopinath was aged 55 years on the date of accident and was unmarried. He was a motor mechanic. According to the claimants in MACP No.189/1992, Gopinath was working in Shriniwas Garage at Pune and was earning Rs.2,000 to 2,500 p.m. A month before the accident he had left the said garage and started a garage of his own. The Tribunal has observed that the deceased cannot start earning Rs.2000-2,500 within one month of starting a new garage and as such has taken a notional income of Rs.15,000/- p.a. The Tribunal has also observed that there were neither any premises shown nor a license for running such garage. The Tribunal has deducted 2/3rd amount towards personal and living expenses and calculated the dependency at Rs.5,000/- p.m. which to my mind cannot be accepted. The assessment of compensation, necessarily involves a certain amount of reasonable guess work. The deceased was a young boy of 25 years and had an experience of working in a garage at Pune and monthly income of the deceased can safely be taken at Rs.1,500/- p.m. i.e. Rs.18,000/- p.a. As per the decision in the case of ***Smt. Sarla Verma & Others Vs. Delhi***

Transport Corporation & Another, (2009) 6 SCC 121, deduction towards personal and living expenses, where the deceased is unmarried is to be 50%. Thus an amount of Rs.9,000/- can be deducted towards personal and living expenses, which will lead to dependency of Rs.9,000/- p.m. So far as the claimants are concerned, as per the decision of ***Smt. Sarla Verma (cited supra),*** appropriate multiplier for the age group of 20-25 is 18. Thus, the compensation would be Rs.9,000 x 18 = Rs.1,62,000/-. A notional amount of Rs.10,000/- can be granted towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, the total compensation would come to Rs.1,77,000/-. This will be inclusive of the compensation on no fault liability basis.

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12. Here again the deceased was 25 years old and was unmarried and was earning Rs.1,500 p.m. The case made out was that the deceased was sending Rs.1,000/- p.m. to the parents. I find that in the present case also the income can be taken as Rs.1,500/- p.m. and thus the compensation for similar reasons as stated above would come to Rs.1,62,000/- plus a notional amount of Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Thus, the total compensation will come to Rs.1,77,000/-. This will be inclusive of compensation granted/paid if any, under the no fault liability. I am inclined to maintain the rate of interest as awarded by

the Tribunal at 9% p.a. from the date of the petition till realization. Consequently, the following order is passed:

ORDER

i) First Appeal No.143/2003 and 144/2003 are partly allowed.

ii) The impugned judgment and award is hereby modified. The Respondent Nos.1 to 3 shall be jointly and severally liable to pay Rs.1,77,000/- in each of the Appeals along with interest at 9% p.a. from the date of the petition till realization.

iii) The Respondent No.3/insurer shall be entitled to recover the said amount from Respondent No.1 and 2 as per the law laid down in ***Challa Upendra Rao***[1].

iv) In the circumstances, there shall be no order as to costs.

(C. V. BHADANG, J.)

1 *National Insurance Co. Ltd V. Challa Upendra Rao,(2004)8 SCC 517.*