Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1120 OF 2016
WITH
CIVIL APPLICATION NO. 2966 OF 2016

The New India Assurance Co Ltd ...Appellant
Versus
Takaribunissa Mohd Safiq Chaudhary & Ors ...Respondents

Mr Sandeep Jinsiwale, *for the Appellant.*
Mr Niketan Nakhawa, *for Respondents Nos.1, 5 to 7.*

CORAM: G.S. PATEL, J
DATED: 30th June 2017

PC:-

1. **Admit.** By consent taken up for hearing and final disposal forthwith. Both sides agreed that the present compilation is sufficient for disposal of the Appeal.

2. One Mohd Safique Batanu Chaudhary was injuried in a motor accident on 27th March 2007. He was taking his motorcycle out from where it was parked, near the footpath near Sunrise Bakery, Suchak Naka, Kalyan (E). At that time a container truck No. MH-06-K-5719, travelling at a very high speed, overturned and collided with a motorcycle on its left. Mohd Safique Chaudhary suffered serious injuries. He was hospitalised at the Rukmanibai Hospital, Kalyan (W) and later shifted to the Chatrapati Shivaji Maharaj Hospital, Kalwa. He died on 28th March 2007, the next day. He was about 30 years old at the time and in otherwise good health. He worked with one Birendra Construction, Sagaon, Dombivali (E) as a daily wage labourer earning Rs.200/- to Rs.250/- a day.

3. Before the Motor Accidents Tribunal, Kalyan, Opponent No.1 was the owner of the container Truck. Opponent No.2 was the Insurer.

4. A crime was registered with the Kolshewadi Police Station at Crime No.60 of 2007.

5. Opponent No.1 did not contest the proceedings. Only the Insurer did.

6. At the time and the claim was first filed, Applicant No.7 a minor, was not joined. The 1st Applicant, the deceased's widow, was pregnant at that time. Applicant No.7 was born thereafter. The Applicants before the MACT were respectively, the deceased's widow (Applicant No.1), the parents (Applicants Nos.2 and 3) and the deceased's children (Applicants Nos.4 to 7).

7. The Insurer disclaimed liability saying that the truck driver did not have a valid license. The other allegations were denied.

8. The MACT framed three issues and held, (i) that the death of the deceased was on account of the rash and negligent driving of the driver of the container truck; (ii) that there was no composite or contributory negligence; and then proceeded to award interest of Rs.16,23,400/- with interest at 9% per annum, of which an amount of Rs.1,00,000/- was to be kept deposited in the names of the children (Applicants Nos.4 to 7), and each of the parents was received Rs.75,000/-.

9. Several documents were filed before the MACT and the 1st Applicant also gave evidence. The Insurance Company did not lead the evidence of any witness.

10. The result is that there is no controversy about the incident itself and the MACT, Kalyan had no evidence to show that the deceased was in any way responsible or negligent. The fact that the 1st Applicant was not an eye witness should not matter much. A version is supported by the documents obtained from the police including the FIR registered under Sections 279, 337 and 338 of the Indian Penal Code and Sections 184 and 134 of the Motor Vehicles Act. The evidence indicated that the cause of the container truck overturning was the breakage of its axle rod, thus disengaging the chassis of the container truck. The road at that point was 30 ft. wide, and the divider was in the middle of it, at a distance of about 15 ft. from the container truck's wheel. The impact was so severe that a signboard nearby was damaged. So too were a handcart, a parked Maruti vehicle, and a rickshaw. On these facts, and after examining the post-mortem report which was also produced, the MACT, Kalyan concluded that the death was caused by the accident and that the accident was due to the negligence of the truck driver. It is not possible to fault this finding or conclusion.

11. The next aspect of the matter relates to the income and it is here that Mr Jinsiwale for the Insurer submits that since the deceased was self-employed, his future prospects ought not to have been considered. I find it difficult to accept this proposition. It seems to me to be placed in an altogether overbroad manner, especially when it is submitted that in no case can the future prospects of a self-employed person ever be taken in account. As observed in *Santosh Devi v National Insurance Co. Ltd and Ors,*[1] it is difficult to discern a basis for a proposition placed like this. After all, there are many persons in many fields of endeavour and walks of life who are self-employed, ranging from, say, the film industry to the practice of law. The fact that they are self-employed does not mean that they do not have future prospects; indeed our experience in law should quite emphatically tell us to the contrary (and that, when it comes to law, it is probably incorrect to say that a person over the age of 50 or 60 has no future prospects). The question is perhaps more accurately what should be taken as a reasonable percentage as future prospects. There may be some basis to saying that beyond the certain age it is unreasonable to expect there to be significant future prospects (though again an exception may have to be carved for those involved with the law; the future prospects of some improve dramatically with years).

1(2012) 6 SCC 421.

12. The view in *Santosh Devi* was, as it happens reiterated in *Rajesh v Rajbir Singh*.[2] It is true that a contrary view seems to have been taken in *Reshma Kumari v Madan Mohan*,[3] but both *Rajesh vs. Rajbir* and *Reshma Kumari* are decisions of benches of the same strength, i.e. three Judge Benches, and *Rajesh v Rajbir* is the later one of these two. When, therefore, the MACT followed the decision of the Supreme Court in *Santosh Devi*, it was justified in doing so. Again, it is not possible to hold that the view taken by the MACT was either perverse or completely contrary to settled law.

13. The MACT accepted 30% of an income of Rs.5,000/- as future prospects, making an aggregate income of Rs.6,500/- and therefore, with a 1/5th deduction towards self-expenses, arriving at an aggregate figure of Rs.62,400/-. Applying a multiplier of 16, the MACT arrived at a figure of Rs.9,98,400/-. Again it is not possible to find fault with the MACT's reckoning of any of the components comprised in this figure. A further amount of Rs.1,00,000/- was awarded towards consortium, another of Rs.1,00,000/- for loss of estate, Rs.4,00,000/- for loss of love and affection for the children (Rs.1,00,000/-each) and Rs.25,000/- as funeral expenses, making a total of Rs.16,23,400/-.

14. On merits, therefore, I see no reason to interfere with the judgment under Appeal.

15. The Appeal is dismissed. There will be no order as to costs.

2(2013) 9 SCC 54.

3(2013) 9 SCC 65.

16. It is at this stage in fairness pointed out that Respondents Nos.2 and 3 (original Opponents Nos.2 and 3), the parents of the deceased have passed away. Their heirs other than the deceased's immediate family have not been joined. The Applicants will therefore not be entitled to withdraw an amount of Rs.1,50,000/- since each of the parents was awarded Rs.75,000/-. This amount of Rs.1,50,000/- will continue to remain deposited with the MACT. The Applicants may make the necessary application for amendment, which the MACT will consider. The MACT may then take up any further application for withdrawal thereafter. It is however made clear that the appeal by the Insurance Company even in regard to this amount stands dismissed.

17. I am now told also that one of the children, the eldest, a girl who at the time of the claim was about eight years old has also passed away. An amount of Rs.1,00,000/- was awarded to her. This amount is permitted to be withdrawn by Applicant No.1, the mother, giving an undertaking that this amount of Rs.1,00,000/- will be shared equally between her and her surviving three children in the amount of Rs.25,000/-each.

18. The Appeal is disposed of in these terms. There will be no order as to costs.

19. In view of disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(G. S. PATEL, J.)