Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 284 OF 2016

Bajaj Alliance General Insurance Co. Ltd. ... Appellant
Vs.
Smt. Sukhshala B. Funde & Ors. ... Respondents

Mr. M.M. Sathaye, Advocate for the appellant.
Mr. Yuvraj P. Narvankar, Advocate for respondent nos. 1 to 3.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **31st August, 2017.**

ORDER:

Admit. By consent, the First Appeal is heard finally at the stage of admission.

2. This First Appeal is directed against the judgment and award dated 15th June, 2013 passed by the learned Chairman, Motor Accident Claims Tribunal, Pune in M.A.C.P. No. 1071 of 2008 granting compensation of Rs.14,40,715/- to the original claimants @ 9% p.a. from the date of filing of the Petition, i.e., 22nd September, 2008.

3. The respondents/original claimants are the wife, two major children and one minor child. Out of them, one daughter is of

marriageable age. These respondents/original claimants have filed an Application under section 166 of M.V. Act against the owner of the truck and the appellant/insurance company claiming compensation of Rs.12 lakhs.

4. On 23rd August, 2008 at about 7.15 a.m. Babasaheb @ Dadasaheb Funde was driving his tempo bearing No. MH-12/AU-4310 from Katraj Kondhwa road, Pune. One truck bearing No. MH-12/AQ5949 was proceeding ahead of the tempo of Babasaheb. The truck was fully loaded with iron bars and major portion of the iron rods was protruding out from the back side of the truck. Babasaheb was driving the tempo with a moderate speed. However, the truck driver suddenly stopped the truck, due to which the tempo dashed on the pointed ends of iron rods. This caused severe head and body injuries to Babasaheb. He was admitted to the hospital and was in I.C.U. for 9 to 10 days. Thereafter, Babasaheb Funde succumbed to the injuries on 2nd September, 2008.

5. It was pleaded in the application that the accident has caused due to rash and negligent driving of the truck driver. It was contended that the deceased was earning Rs.10,000/- p.m. from his tempo business and was having agricultural income to the extent of

Rs.5,000/- to Rs.6,000/- and thus, the applicants made a claim of compensation of Rs.12 lakhs.

6. The insurance company appeared in the proceedings and filed its written statement opposing the claim. The respondent-company had challenged its liability mainly on the ground of contributory negligence and also on the point that the driver of the truck was not holding a valid licence.

7. The claimant stepped in the witness box and one Pravin Jadhav from Bharati Hospital, where deceased Babasaheb was admitted from 23rd August, 2008 to 2nd September, 2008, was examined as a witness. The opponent examined Shashikant kale, Junior Clerk in R.T.O., Mumbai. He produced the papers and driving licence of truck driver Chandrakant. After considering the oral as well as documentary evidence of the witness, the learned Chairman, Motor Accident Claims Tribunal allowed the application wholly. Hence, this Appeal.

8. The learned counsel for the appellant company has submitted that the deceased Babasaheb was driving tempo and the tempo dashed the truck which was proceeding ahead. Babasaheb died due

to injuries caused to him from the iron rods which were protruded out of the truck. However, this accident was due of the rash and negligent driving of the deceased and the driver of the truck cannot be held responsible for this. At the most, it is a case of contributory negligence and the trial Court has failed to appreciate this defence. He further argued that the insurance company has challenged the impugned judgment and award on the ground of quantum also. The learned Chairman, Motor Accident Claims Tribunal has erred in accepting Rs.10,400/- as a monthly income and granted excessive compensation to the claimants. He further submitted that the deceased was in the business of transport, however, his own tempo was not insured and thus he was negligent and this ought to have been considered as a contributory negligence. The learned counsel has further argued that the learned Chairman, Motor Accident Claims Tribunal has erred in granting 30% increase in the monthly income towards the future prospectus. He submitted that the judgment and award dated 15th June, 2013 passed by the learned Chairman, Motor Accident Claims Tribunal, Pune is to be set aside.

9. The learned counsel Mr. Narvankar appearing for the respondents/original claimants opposed this Appeal and justified the

judgment and award passed by the learned Chairman of Motor Accident Claims Tribunal.

10. Heard the submissions. Perused the impugned order and the evidence. The deceased followed the truck involved in the accident. The truck was loaded with iron rods and major portion of the iron rods was protruding out from the back side of the truck. The truck driver applied the break, therefore, the truck stopped and the tempo driven by the deceased had impact with the rods. The deceased had sustained injuries due to the rods which were coming out of the body of the truck. Though it was rear side dash, the deceased cannot be held responsible for the accident for the reason that the rods loaded in the truck were protruding out from the body of the truck. A goods carrier is expected to take minimum precaution that the goods loaded in the vehicle should not come out the body of the vehicle or should not fall on others. The loading should not be such that it should cause any physical harm to passerby or other commuters. It is an absolute responsibility of the owner, driver of the goods carrier. While driving, correct judgment of the distance is a major factor. If any part of the goods is coming out of the body of the truck, then it is difficult for the driver of the rear side vehicle to have correct judgment

of the distance while applying the break. Therefore, this is not a case of the contributory negligence.

11. In the evidence, the original claimant PW-1 in the cross-examination has admitted that the tempo of the deceased was not insured, however, this cannot be said as contributory negligence. If it would have been insured, then the liability of the insurance company would have been shared and reduced but that cannot be a ground to bring down the amount of compensation which is awarded by the learned Chairman, Motor Accident Claims Tribunal. Thus, the judgment and award passed by the learned Member, Motor Accident Claims Tribunal is found well reasoned and legal. The amount awarded is just and adequate. Hence, the Appeal fails.

12. First Appeal is dismissed. Parties to bear the costs.

(MRIDULA BHATKAR, J.)