

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL No. 1529 OF 2014
WITH
CIVIL APPLICATION No. 139 OF 2012

The New India Assurance Co. Ltd. ... Appellant/Applicant
Vs.
Hayat Mohd. Rahmullah Choudhari & Ors. ... Respondents

WITH
CIVIL APPLICATION No. 846 OF 2017
IN
FIRST APPEAL No. 1529 OF 2014

Hayat Mohd. Rahmullah Choudhari & Ors. ... Applicant
Vs.
The New India Assurance Co. Ltd. ... Respondent

Mr. S.M. Dange, Advocate for the appellant.
Mr. T.J. Mendon, Advocate for respondent nos. 1 to 9 in First Appeal
and for applicants in CAF/846/2017.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 26th September, 2017.

P.C.:

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

2. The appellant/insurance company has challenged the judgment
and award dated 4th March, 2011 passed by the learned Member,
Motor Accident Claims Tribunal, Mumbai in Application No. 666 of
2006. the respondents/original claimants are the parents, wife and 6

children of the deceased. Abdul Hakim Hayat Mohd. Choudhari died in an accident on 18th November, 2005 when he was driving Motor Trailer. The offending Motor Lorry bearing no. RJ-04-GA-0375 came from the opposite side in rash and negligent manner and dashed the motor trailer. Due to the dash, Abdul Hakim Hayat sustained fatal injuries and he was shifted to the hospital. However, he succumbed to injuries on the next day. Therefore, the applicants filed Claim Petition for Rs.12 lakhs. The respondent/insurance company appeared in the matter and filed written statement resisting the claim. Opponent no. 1/owner of the lorry though appeared but did not file written statement. The father of the deceased examined himself on the point of debt, income and dependency. One more witness Mahesh Kadam was examined to prove income of the deceased as Rs.5,500/-. On the basis of oral and documentary evidence, the learned Member of the Tribunal granted compensation of Rs.6,42,500/- with simple interest @ 7.5% p.a. Being aggrieved by the judgment and award passed by the learned Member, Tribunal, the appellant/insurance company has filed this Appeal.

3. The learned counsel for the appellant has submitted that the learned Member has erred in appreciating the evidence of the

claimants. He submitted that the fact of income of the deceased is not at all proved. The salary certificate is not properly proved by the claimants. The learned Member has erred in accepting the income of the deceased as Rs.4,500/- per month. The learned counsel has further submitted that the claim should have been rejected mainly on the ground of not proving the fact that the driver of the lorry was rash and negligent. He submitted that it was necessary for the applicants to produce the document of examining the witness on the point of rash and negligent driving on the part of the driver of the offending vehicle/lorry. The learned counsel further argued that the inference drawn by the Tribunal that the driver of the lorry was rash and negligent is not logical and imaginary and hence it is to be discarded. He further submitted that the accident took place at Rajasthan, so the claim petition should have been filed in Rajasthan and not in Mumbai.

4. The learned counsel for the respondents/original claimants submitted that the point of jurisdiction was not raised before the Tribunal by the insurance company. On the point of territorial jurisdiction, he relied on the following judgments of the Hon'ble Supreme Court:

- (i) Mantoo Sarkar vs. Oriental Insurance Co. Ltd. & Ors., 2009 ACJ 564.
- (ii) Malati Sardar vs. National Insurance Co. Ltd. & Ors., 2016 ACJ 542.

5. Heard the submissions of the learned counsel. The applicant/father has stepped in the box and has deposed about the accident and the income of the deceased. The employer Mahesh Kadam has deposed that he used to pay Rs.5,500/- p.m. to the deceased who was working on his vehicle as a driver. The learned Tribunal has fixed the salary of the deceased as Rs.4,500/- p.m., which is found reasonable. On the point of negligence, the submissions of the learned counsel for the insurance company cannot be accepted. In the judgment, the learned Member has also considered police papers, i.e., inquest panchnama and by referring the said document has said that the driver of the lorry was rash and negligent. Though inquest panchnama is mainly on the point of disclosing the condition of the dead body, in recital the police always state about how the accident took place. In the cases which are tried under M.V. Act, strict proof of fact is not required. Moreover, in the present case, the insurance company did not examine the driver of

the lorry on the point of negligence. The deceased himself was driving the motor trailer and accident took place at highway at 9.30 p.m., therefore, it is not possible for the claimants to bring any eye witness.

6. Generally where the accident takes place, the Tribunal formed under M.V. Act has territorial jurisdiction. However, in the present case, the claim is filed before M.A.C.T., Mumbai and the objection on the ground of territorial jurisdiction was not raised and so the entire evidence was recorded and compensation was granted. Thus, the opponent/insurance company has submitted to the jurisdiction of the Tribunal at the time of hearing of the Application. Moreover, I rely on the ratio laid down in the case of **Malati Sardar** (*supra*) wherein the Hon'ble Supreme Court has held that the insurance company, who is the main contesting respondent, has its business at the place where the application for compensation is filed, then it cannot be said that the said Tribunal has no jurisdiction to try and entertain the Application for compensation filed by the claimants. It has also held that the provisions of territorial jurisdiction has to be interpreted consistent with the objects of the Act. The M.V. Act is a social legislature. In this case, the relief oriented approach whenever

possible is to be taken. Under such circumstances, the judgment and award dated 4th March, 2011 passed by the learned Member, Motor Accident Claims Tribunal, Mumbai is maintained.

7. The statutory amount of Rs.25,000/- deposited in this Court at the time of filing of appeal shall be transferred to the Motor Accident Claims Tribunal, Mumbai.

8. First Appeal is dismissed.

9. Civil Applications are also accordingly disposed of.

(MRIDULA BHATKAR, J.)