IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL STAMP NO. 34150 OF 2016
WITH
CIVIL APPLICATION NO. 4866 OF 2016
WITH
CIVIL APPLICATION NO.1316 OF 2017
WITH
CIVIL APPLICATION NO. 1744 OF 2018
WITH
CIVIL APPLICATION NO. 4867 OF 2016

The Oriental Insurance Co. Ltd. … Appellant
Versus
Dadasaheb Bapu Narute and others … Respondents

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Mr. Devendranath S. Joshi, Advocate for the Appellant.
Mr. Ghansham S. Jadhav, Advocate for Respondent Nos. 1 and 2.

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CORAM : A. S. CHANDURKAR, J.

DATE : 13th DECEMBER, 2018.

P. C.:

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the said Act') has been filed by the insurer challenging the judgment dated 18/03/2006 passed by the Claims Tribunal, Baramati, thereby awarding an amount of compensation of Rs. 25,40,000/- with 9% interest on account of death of the son of the claimants.

2. It is the case of the original claimants that on 04/05/2012 their son was sitting on a motorcycle at about 5.00 p.m. by the

side of the road. A truck insured with the present appellant gave a dash to the said motorcycle resulting in injuries to their son – Shivaji. Their son succumbed to the said injuries. He was aged about 20 years and by filing application under Section 166 of the said Act, compensation of Rs.45,00,000/- was claimed.

3. The owner of the vehicle remained ex-parte. The Insurance Company filed its written statement and did not dispute that the truck in question was insured by it. It was however pleaded that the accident occurred on account of negligence of the deceased and that there was also a breach of policy by the owner of the vehicle.

4. The trial Court after considering the evidence on record held that the accident occurred on account of negligent driving of the offending vehicle. On that premise the claim petition was partly allowed and an amount of Rs.25,40,000/- with interest was granted as compensation. Being aggrieved the Insurance Company had filed the present appeal.

5. Shri Devendranath S. Joshi, learned Counsel for the appellant – Insurance Company submitted that the evidence on record indicated that the accident was caused due to the negligence of the victim. He referred to the spot panchanama at Exhibit-30 as well as the documents filed along with charge-sheet at Exhibit-70. According to him the accident was caused due to the negligence of the victim and he had also contributed to the same. It was then submitted that the income of the deceased had

been considered on a higher side. As a result of which, excess compensation was granted to the claimants. The multiplier as applied was also on a higher side and the average age of the claimants ought to have been taken into account while determining the multiplier. It was also submitted that the deceased was not having driving license at the time of the accident, which factor was also required to be taken into consideration. On aforesaid basis it is submitted that the compensation as awarded deserves to be proportionately reduced by modifying the judgment of the Claims Tribunal.

6. On the other hand, Shri Ghansham S. Jadhav, learned Counsel for the claimants supported the impugned judgment relying upon the evidence on record. It was submitted that the deceased was standing at the side of the road and he was not negligent in any manner. It was the negligence of the driver of the offending vehicle which resulted in the accident and this aspect has been rightly considered by the Claims Tribunal. The documents at Exhibits-63 and 64 indicated monthly salary of the deceased and the annual salary was rightly taken at Rs.1,80,000/- Deduction of 50% was accordingly made for personal expenses as the deceased was unmarried. The multiplier was also rightly applied in the light of the law as prevailing. It was thus submitted that there is no reason to interfere with the judgment of the Claims Tribunal.

7. The following point arises for determination:

> Whether the Claims Tribunal has awarded just compensation to the claimants or whether the compensation awarded deserves to be reduced?

8. I have heard the learned Counsel for the parties at length and I have also perused the material placed on record. The Claims Tribunal has taken into consideration the spot panchanama at Eaxhibit-30, in which the width of the tar-road is shown at 18 feet, while the spot of the accident is at a distance of 05 feet from the Southern side of the said road. On the basis of this report as well as the statement of three witnesses which were part of the police papers, it has been found that the deceased had parked his motorcycle by the side of road and it was the offending truck which came and dashed the motorcycle. It is found that this conclusion recorded by the Claims Tribunal is based on documents and evidence available on record. The same cannot be said to be perverse. The contention as regards absence of driving license with the deceased is not relevant as the eye witnesses had stated that the motorcycle was parked by the side of the road and it was not being driven by the deceased. Thus, the finding that the offending vehicle was responsible for the cause of action is a correct finding.

9. As regards the income of the deceased, the documents at Exhibits-63 and 64 indicate the amount of salary at an average of

Rs.15,000/- per month being paid to the deceased. Witness who was working alongwith the deceased was also examined. It is on that basis that the annual salary of the deceased was taken as Rs.1,80,000/-. 50% deduction for personal expenses has also been rightly made. The multiplier of 18 on the basis of age of the deceased who was 19 years and 10 months old has also been rightly taken. It is thus found that on the basis of evidence available on record the annual income of the deceased has been determined and by applying the correct multiplier the total loss has been determined. It is thus found that the Claims Tribunal has not awarded excess compensation, but in fact it has awarded just compensation. No legal ground is found to reduce the amount of compensation as awarded. The point as framed is answered by holding that the Claims Tribunal has awarded just compensation to the claimants and the impugned judgment does not called for any interference.

10. Accordingly, the judgment dated 18/03/2016 passed by the Member, Motor Accident Claims Tribunal, Baramati in M.A.C.P. No.190 of 2012 stands confirmed. The First Appeal stands dismissed with no order as to costs. The claimants are at liberty to withdraw the balance amount of compensation with accrued interest. Pending civil applications are also disposed of.

(A. S. CHANDURKAR, J.)