

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1039 OF 2010

The United India Insurance Co.Ltd.,
through its Divisional Manager,
Divisional Office, Osmanpura,
Aurangabad

APPELLANT
(Ori.Respondent No.2)

VERSUS

1. Shahin Begum w/o Sk. Razzak,
Age : 42 years, Occu. Household,
R/o Police Colony, Sneh Nagar,
Nanded

2. Sk. Umar s/o Sk. Razzak,
Age : 211 years, Occu. Nil,
R/o Police Colony, Sneh Nagar,
Nanded, Tq. & District Nanded

3. Sk. Sameer s/o Sk. Razzak,
Age : 20 years, Occu. Education,
R/o as above-mentioned

4. Rohina Sulana d/o Sk. Razzak,
Age : 12 years, Occu. Education,
U/G of Natural Mother
Shahin Begum, R/o as above

RESPONDENTS
(Orig. Claimants)

5. Rohina Sulana d/o Sk. Razzak,
Age : 12 years, Occu. Education,
U/G of natural mother
Shahim Begum R/o as above

6. Shaikh Ibrahim s/o Shaikh Hazi Rasool,
Age : Major, Occu. Business
(Owner of Tipper No. MH-26/B-8441),
R/o Wajegaon, Tq. and Dist. Nanded

7. Savita w/o Shaikh Razzak,
Age : 30 years, Occu. Household,
R/o Venkatesh Nagar, Nanded

8. Shaikh Arbaz s/o Shaikh Razzak,
Age : 6 years, Occu. Education,
U/G of natural mother Savita
- RESPONDENTS**
(Respondent Nos.
5 to 8 are orig.
Respondent Nos. 5
to 8)

Mr. S.V. Kulkarni, Advocate for the appellant
Mr. Taher Ali Quadri, Advocate holding for Mr. M.G.
Mustafa, Advocate for respondent Nos.1 to 5
Mr. A.I. Deshmukh, Advocate holding for Mr. B.G.
Deshmukh, Advocate for respondent No.6

CORAM : SUNIL K. KOTWAL, J.

DATE : 7th JUNE, 2019

ORAL JUDGMENT :

This appeal is directed by original opponent No.2 – United India Insurance Company Ltd. against the judgment and award dated 4th November, 2008, passed by the Motor Accident Claims Tribunal, Nanded ("Tribunal", for short) in Motor Accident Claims Petition No.356 of 2003, whereby compensation of Rs.7,45,040/- was awarded by the Tribunal with accrued interest thereon at the rate of 7.5% per annum. Respondent Nos.1 to 5 are original claimants and respondent NO.6 is owner of the offending vehicle i.e. Tipper bearing registration No.MH-26/B-3441. Respondent Nos.7 and 8 in the appeal are original opponent Nos.3 and 4.

2. The facts, in nutshell, leading to institution of this appeal are that on 2nd May, 2003, at about 12.30 p.m., on Nanded-Ardhapur road, when deceased Sk. Razzak Sk. Rahmatullah was proceeding by his motorcycle, that time, the offending vehicle came from opposite direction in high speed and gave dash to the motorcycle, resulting into the death of the deceased. Accident occurred due to rash and negligent driving of the driver of the offending vehicle. Therefore, the claimants filed claim petition under Section 166 of the Motor Vehicles Act for compensation of Rs.12,50,000/-.

3. The claim petition was opposed by opponent No.2 – Insurance Company by denying all the contents of claim petition. According to opponent No.2, the accident occurred due to rash and negligent driving of the deceased. The original opponent Nos.3 and 4 claimed right in compensation as wife and son of the deceased. However, their claim was subsequently rejected by the Tribunal.

4. Heard Shri S.V. Kulkarni, learned counsel for the appellant and Shri Taher Ali, learned counsel holding for Shri M.G. Mustafa, Advocate for respondent Nos.1 to 5.

5. Learned counsel for the insurer of the offending vehicle submitted that the spot panchanama of the spot of accident (Exh-41) shows that the accident occurred on the middle portion of the road, which is sufficient to hold that the deceased contributed the occurrence of the accident. He has drawn my attention towards the map which part of the spot panchanama (Exh-41).

6. On the other hand, learned counsel for the claimants submits that the Insurance Company neither examined the driver of the offending vehicle nor any other witness to substantiate his contention.

7. The only point for determination which arises before me is "whether the accident occurred due to the negligence of the deceased himself?"

8. After going through the record and proceedings, it emerges that even in the written statement, contention of Insurance Company is altogether different than argued by its counsel. It is the contention of the Insurance Company that due to rash and negligent driving of the motorcycle, the deceased fell on hard and blunt

object and sustained multiple injuries. However, to substantiate this contention, the appellant – Insurance Company did not examine either the driver of the offending vehicle or any other eye witness. Otherwise also, the spot panchanama (Exh-41) nowhere indicates that the spot of the accident is on the middle portion of the road. On the other hand, the map of the spot shows that the motorcycle as well as offending vehicle were found lying by the side of the road. Therefore, the argument advanced by the learned counsel for the Insurance Company is neither supported by any direct evidence nor by documentary evidence. In the circumstances, by no stretch of imagination, it can be held that the accident occurred due to negligence of the deceased. I answer the above point in negative.

9. Regarding quantum of compensation, no objection has been raised by the Insurance Company. Otherwise also, after going through the judgment and award, I am fully satisfied that the compensation awarded by the Tribunal cannot be termed as exorbitant compensation. On the other hand, under conventional heads, meager compensation is awarded by the Tribunal. The Tribunal even did not consider the loss of future prospect though

the deceased was in Government service. However, in the absence of Cross-Objection, this Court cannot enhance the compensation amount. It is suffice to say that this appeal being devoid of merit deserves to be dismissed.

10. Accordingly, First Appeal No.1039 of 2010 is dismissed.

11. The claimants are permitted to withdraw the entire compensation amount with accrued interest thereon deposited in this Court. The compensation amount, if any lying in this Court, the same be transmitted to Motor Accident Claims Tribunal, Nanded for its disbursement to the claimants in accordance with the award passed by the Tribunal.

12. The parties to bear their respective costs of the appeal.

[SUNIL K. KOTWAL]
JUDGE

npj/fa1039-2010