FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 1191/2017
(SINDHU GANPAT SAWARBANDHE & OTHERS **VERSUS** THE MANAGER, NATIONAL INSURANCE COMPANY LTD., BHANDARA & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri V.R. Thote, counsel for the appellant.
Ms Priya S. Zoting, counsel for the R-1.

CORAM : A.S. CHANDURKAR, J.
DATE : JANUARY 15, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard on merits.

By this appeal filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the said Act'), the claimants seek grant of compensation in proceedings under Section 166 of the said Act as they are aggrieved by the judgment of the Motor Accident Claims Tribunal dismissing the said claim petition.

On 25.01.2010, the husband of appellant no.1 and the father of other appellants was proceeding by foot to his house. A Maruti Van which was owned by the respondent no.2 and driven by the respondent no.3 dashed the husband of appellant no.1 from behind. He sustained injuries and was taken to hospital where he succumbed to the same. According to the claimants, the deceased was aged about 55 years and was earning Rs.4,500/- per month from agricultural work. Hence, compensation of Rs.3,00,000/- came to be claimed. In the written statement filed by the Insurance Company, it was pleaded that there was breach of the terms and conditions of the policy as the vehicle was driven negligently by the driver. It was denied that the claimants were entitled for any compensation. After the parties led evidence, the Claims Tribunal on considering the same held that the claimants had not proved that the death of the deceased was on account of any injury from use of a motor vehicle. The claim petition was thus dismissed. Hence, the present appeal.

Shri V.R. Thote, learned counsel for the appellants submitted that the factum of the accident had not been disputed by the respondents in their reply before the Claims Tribunal. On the contrary, in the written statement filed by the Insurance Company, it had been specifically pleaded that the accident occurred due to rash and negligent driving of the Van which it had insured. The driver of the vehicle was not examined so as to deny the occurrence of the accident. Referring to the police papers on record, he submitted that the occurrence of the accident was specifically mentioned in each document and merely because the post-mortem report did not give the cause of death, it could not be said that the death did not occur on account of that accident. In absence of any contrary evidence, the Claims Tribunal was not justified in dismissing the claim. It was thus prayed that just and fair compensation be awarded.

Mrs. P.S. Zoting, learned counsel for the respondent no.1 supported the impugned judgment. According to her, the burden to prove occurrence of the accident was on the claimants and as there was no sufficient evidence in that regard, the claim was rightly dismissed. She referred to the post-mortem report and the injuries stated therein to urge that such injuries could not have been caused in the accident. It was further submitted that as the driver of the vehicle was rash and negligent, there was a breach of the policy conditions and hence the Insurance Company was liable to be exonerated.

On hearing the learned counsel, the following points arise for determination:-

I) Whether the Claims Tribunal was justified in holding that no accident occurred for granting compensation under Section 166 of the said Act?

II) If the answer to Point No.1 is in the negative, whether the claimants are entitled for compensation?

Heard the learned counsel and perused the records. The First Information Report is placed on record at Exhibit 23 dated 26.01.2010. It refers to the report of one Vilas Vairagade in which it is stated that when the deceased was proceeding by foot, he was dashed from the rear side by the Van owned by the respondent no.2. The respondent no.2 has been shown as accused therein. Similarly, the spot panchanama also indicates the place where said accident occurred. The inquest panchanama refers to injuries sustained by the deceased and when the post-mortem report at Exhibit 26 is considered alongwith these documents, the fact that the deceased sustained injuries stand corroborated. It is further to be noted that the driver of the offending vehicle chose not to contest the claim petition and to lead evidence for rebutting the stand of the claimants that the vehicle driven by him had caused the accident. The learned Member of the Claims Tribunal was swayed by the injuries mentioned in Column no.17 of the post-mortem report. However, on considering all these documents together, it can be said on preponderance of probabilities that the deceased met with an accident as he was dashed by the vehicle owned by the respondent no.2 and driven by the respondent no.3. The contrary finding recorded by the Claims Tribunal is not liable to be sustained. Point no.(I) is accordingly answered by holding that the husband of appellant no.1 died on account of the motor accident and claimants are thus entitled to claim compensation.

According to the appellants, the monthly income of the deceased was Rs.4,500/-. There is however no evidence placed on record by them in that regard. The deceased was aged about 55-56 years. Considering the decision in *Sri Ramachandrappa Versus The Manger, Royal Sundaram Alliance Insurance Company Ltd.* [**2011 (7) All MR 774**] and in the facts of the present case, notional income of Rs.4,000/- per month can be taken. The deceased would be entitled for future prospects at 10% thereof which would come to Rs.4,400/-. Considering number of family members, $1/3^{rd}$ amount, i.e. Rs.1,466/- is liable to be deducted for his personal expenses. Thus loss of monthly income can be taken at Rs.2,934/- and the annual loss of income would be Rs.35,208/-. There is no evidence as to the exact age of the deceased. It is claimed that he was aged 55 years. It is thus found that multiplier of 9 can be taken in these facts which is applicable for the age group 56 to 60 years. That amount would come to Rs.3,16,872/-. Further amount of Rs.70,000/- is admissible for compensation under the conventional heads. This would make total compensation of Rs.3,86,872/-. Point no.(II) is answered accordingly.

In the result, following order is passed:-

(i) The judgment of the Claims Tribunal in M.A.C.P. no.22 of 2010 dated 30.11.2011 is hereby set aside.

(ii) It is held that the appellants are entitled for compensation of Rs.3,86,872/- with interest at 9% per annum from the date of filing of the claim petition till its realization. The amount of compensation would include the amount paid towards the 'No Fault Liability'.

The First Appeal is allowed in aforesaid terms and disposed of. No costs.

JUDGE

APTE