IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 89 OF 2015

National Insurance Co. Ltd. thr. Its Regional Manager
vs.
Ashvini wd/o Manoj Gadekar and others

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

Smt. S. G. Kasbekar, counsel for appellant Ins.Co.
Shri. P. N. Upadhyay, counsel for respondents No.1 & 2

CORAM : MANISH PITALE J
DATED : 22.10.2019

The appellant insurance company has challenged judgment and order dated 12.11.2013 passed by the Motor Accident Claims Tribunal, Nagpur, whereby claim application filed by respondents No.1 & 2 along with another claimant was partly allowed and it was directed that the appellant insurance company shall pay compensation of Rs.10,01,700/- to the claimants along with interest @7.5% p.a.

2. The quantum of compensation was directed to be apportioned amongst respondents No.1 & 2. The incident in the present case took place on 27.05.2008. It was stated by the respondents No.1 & 2 that the husband of respondent No.1 (i.e. victim) was riding on a

motorcycle when it was dashed by the offending truck as a result of which, the victim suffered serious injuries and ultimately succumbed. An F.I.R. was registered against the said offending truck and claim application was preferred before the Tribunal.

3. On the basis of material available on record, the Tribunal found that while the offending truck was moving at a high speed from West to East, the motorcycle on which the victim was riding, was moving from South to North and that the incident took place at an intersection. It was found that the motorcycle dashed on right side on the rear wheel of the offending truck, due to which serious injuries were suffered by the victim, resulting in his death.

4. The Tribunal considered the entire material on record and found that there were skid marks of the wheels of the truck for near about 45 feet, demonstrating that at the time of the incident the truck was driven at an excessive speed and that therefore, the offending truck was primarily responsible for the incident. At the same time, the Tribunal noted that the victim was riding from South to North on the motorcycle with two other persons and that if the motorcycle rider could have been at slightly lesser speed, the incident could perhaps had been avoided. In this manner, the Tribunal reached a conclusion as regards quantum of compensation payable to the claimants and it found that 10% of

the same would have to be deducted towards the extent of negligence attributable to the victim. Accordingly, the appellant insurance company was directed to pay 90% of the quantum of compensation as determined by the Tribunal.

5. In the present appeal, the insurance company has raised two fold contentions, firstly, that the victim himself was entirely responsible for the incident as the motorcycle was driven at a very high speed and there were two other persons who were riding with the victim. Secondly, that the quantum of compensation was wrongly calculated by the Tribunal as the monthly income could not have been held at Rs.8000/- p.m., because sufficient material was not placed on record on behalf of the claimants in that regard.

6. On the other hand, the learned counsel appearing for the respondents No.1 & 2 submitted that the findings rendered by the Tribunal in paragraph 8 of the impugned judgment and order demonstrated that the offending truck was in fact responsible for the accident and that the victim to only some extent was found to be responsible. It was submitted that the Tribunal had correctly appreciated the evidence to attribute only 10% negligence to the victim and 90% to the offending truck. It was further submitted that income tax returns were placed on record and that there was

ample material on record before the Tribunal to arrive at the conclusion that he was earning Rs.8,000/- per month. It was submitted that quantum of compensation granted by the Tribunal under other heads were on the lower side and that the appellant insurance company could not raise any grievance in that regard. On this basis it was submitted that the appeal deserved to be dismissed.

7. Heard learned counsel for the rival parties and perused the material on record.

8. The conclusion as regards the negligence attributable to the parties has been discussed in detail in paragraph 8 of the impugned judgment and order. It was found by the Tribunal, on the basis of evidence and material on record, that the offending truck was being driven at an excessive speed and that this was the primary reason for the incident, although it was also noted by the Tribunal that if the motorcycle had been driven at a slightly lesser speed, perhaps the incident may not have occurred in the manner in which it did occur. A perusal of the reasoning given by the Tribunal in paragraph 8 shows that the material on record has been appreciated in detail and it is found that there were skid marks of the wheels of the truck for near about 45 feet, thereby showing that the truck was driven at excessive speed, as a result of which, the motorcycle moving from South towards North ended

up hitting rear right side wheel of the truck. Even if finding rendered by the Tribunal as regards the extent of negligence attributable to the victim is to be taken into consideration, the contents of the F.I.R. and other material on record indicate that the finding of the Tribunal regarding excessive speed of the truck cannot be found fault with. Therefore, it cannot be said that the Tribunal has committed any error in holding that the offending truck was in fact responsible for the incident.

9. The Tribunal has deducted 10% from the quantum of compensation payable to the claimants for the incident, on account of negligence that could be attributed to the victim and in the facts and circumstances of the present case, the said finding rendered by the Tribunal does not appear to be unreasonable. Therefore, the said finding does not deserve any interference.

10. As regards the quantum of compensation, a perusal of the reasoning given by the Tribunal shows that the income of the victim found to be Rs.8000/- p.m. cannot be said to be erroneous. There were income tax returns of the victim on record and he was running a mess. The contention raised on behalf of the appellant insurance company that since income tax return of the year 2007-08 was not placed on record, it could be said that mess being run by the victim was

closed, is based on conjecture and therefore it cannot be accepted. There is no other contention of the appellant insurance company as regards the manner in which the quantum of compensation was calculated after having found that the victim was earning about Rs.8000/- p.m. Therefore, on this aspect also this Court finds that no error is attributable to the finding rendered by the Tribunal.

11. In view of the above, it is found that there is no merit in the present appeal and hence it is dismissed.

12. It is informed that by order dated 20.01.2015, the respondents No.1 & 2 were permitted to withdraw 50% of the amount and that 50% was directed to be kept in fixed deposit.

13. In view of dismissal of the appeal, the respondents No.1 & 2 are permitted to withdraw the balance amount deposited in this Court along with accrued interest.

14. Appeal is disposed of.

JUDGE

KOLHE