

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

FIRST APPEAL NO.204 OF 2018

Reliance General Insurance Co.
Ltd. having registered Office at
Reliance Center-19, Walchand
Hirachand Marg, Ballard District
Mumbai-400001, through its
Manager, Nagpur Office, Ayodhya
Building, 1st Floor, 119, Near Bajaj
Nagar Chowk, Nagpur Tah. and
District Nagpur.

..... APPELLANT

// VERSUS //

1. Rangnath Uttam Wagh,
Aged 65 years, Occ. Nil,
r/o. Pangri, Tq. Deoulgaon
Raja, Distt. Buldhana.
(Appeal abated against
respondent no.1)
2. Sk. Aleem Baig Sardar Baig
No.170, Near K.E.B. Office, 1st

Block, Indra Nagar, Masthi
Malur, Tq.Kolar, Distt.Kolar,
Karnataka.

..... RESPONDENT

Mr.D.N.Kukday, Advocate for the Appellant.
None for respondent no.2.

CORAM : NITIN W. SAMBRE, J.

DATED : SEPTEMBER 26, 2019.

Per Coram :

1. Heard Mr.D.N.Kukday, learned Counsel for the appellant. Appeal is dismissed against respondent no.1 as abated. Though served, none appears for respondent no.2.

2. The respondent/claimant had preferred Claim Petition under Section 166 of the Motor Vehicles Act claiming compensation. On 24.3.2011, his son Parmeshwar, who was working as a Cleaner on Truck bearing Registration No.MH-14/V-4485, died in an accident. There were two other trucks which were involved in the accident i.e. Truck bearing Registration No.KA-08-4737, insured with the appellant and Truck bearing Registration No.MH-14 V-4539.

3. Mr.D.N.Kukday, learned Counsel for the appellant submits that contributory negligence of each of the vehicles should have been worked out. He would also urge that, in view of the Judgment of Apex Court in the matter of **National Insurance Co. Ltd. vs. Pranay Sethi**, the amount of loss of estate is required to be reduced from Rs.1,00,000/- to Rs.15,000/-, funeral expenses from Rs.25,000/- to Rs.15,000/- and the compensation under head loss of love and affection needs to be removed.

4. Considering the aforesaid submissions, the fact remains that there were three trucks referred above involved in the accident in question. Offending truck No.K-08-4737 against whose driver, Crime No.19 of 2011 for the offences punishable under Sections 279, 337, 338 and 427 was registered, was insured with the appellant. Being Cleaner, the deceased was getting 6000/- p.m. at the age of 20 years. The Tribunal analysed the contents of F.I.R. (Exh.23), Inquest Panchanama (Exh.25) and oral evidence of claimant Rangnath (PW-1) and has recorded a finding that the appellant is liable to pay compensation as the offending truck bearing Registration No.KA-08/4737 was insured with it, which truck was negligently driven by its driver resulting into the accident in question.

5. Based on the Judgment in the matter of **Oriental Insurance Company Ltd., Aurangabad vs. Babulal Chunnilal Somani** reported in 2015 (1) Mh.L.J. 71, the Tribunal has every power to consider the contents in the F.I.R. and the Spot Panchanama.

6. The Tribunal perused the sketch in the Spot Panchanama and noticed that the trucks bearing Registration Nos. MH-14/V-4485 and MH-14/V-4539 were properly parked on the extreme left side of the road; whereas offending truck bearing registration No.KA-08/4737 came from the wrong side and gave dash to the truck bearing registration No.MH-14/V-4485 resulting into death of the victim.

7. The Tribunal then analysed income of the deceased and has recorded a finding that the notional income of deceased was Rs.4,000/- p.m. and applied multiplier of 18 considering age of deceased of 20 years.

8. Award of compensation by the Tribunal towards funeral expenses, loss of love and affection and loss of estate is based on the Judgment of the Apex Court as was governing the field at the relevant time in the matter of **Smt.Sarla Verma and Others .vs.**

Delhi Transport Corporation and another reported in 2009 (2)

T.A.C. 677 (S.C.), wherein it is observed as under :

“23.Learned Counsel for the appellants contended that when actual figures as to what would be the income in future, are available it is not proper to take a nominal hypothetical increase of only 50% for calculating the income. He submitted that though the deceased was receiving Rs.4004/- per month at the time of death, as per the certificates issued by the employer (produced before High Court), on the basis of pay revisions and increases, his salary would have been Rs.32,678/- in the year 2005 and there is no reason why the said amount should not be considered as the income at the time of retirement. It was contended that the income which is to form the basis for calculation should not, therefore, be the average of Rs.4004/- and Rs.8008/-, but the average of Rs.4004/- and Rs.32,678/-.”

9. In the aforesaid background, submissions of learned Counsel for the appellant does not hold any substance. The appeal, as such, fails. The same stands dismissed.

10. The amount of compensation decided in this Court be immediately relegated back to the Claims Tribunal, Buldana. The Tribunal shall issue appropriate notice to the Claimants and shall disburse the amount in accordance with law.

JUDGE

[jaiswal]

