

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

FIRST APPEAL NO.960/2018

Liberty General Insurance Limited (Formerly known as Liberty Videocon
General Insurance Co. Ltd.)

..Vs..

Sudhir Anandrao Kokate and others

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

Court's or Judge's orders

Shri D.N. Kukday, Advocate for the appellant.
Shri A. J. Mirza, Advocate for respondent Nos.1 to 3.

CORAM : NITIN W. SAMBRE, J.

DATED : 5.9.2019

1] Heard.

2] This appeal is by the original respondent No.2 to the Claim Petition No.350/2018 decided by the Chairman, Motor Accident Claims Tribunal, Amravati by the impugned award dated June 14, 2018.

3] The judgment impugned is based on the Apex Court judgment delivered on May 13, 2016 in the case of Jai Prakash V/s. M/s. National Insurance Co. and others in Petition (s) for Special Leave to Appeal (C) Nos.11801 - 11804/2005.

4] As a consequences of above, Tribunal has passed order below Exh.1 in the following background:

One Sudhir, husband of deceased, pursuant to an accident occurred on July 13, 2017 lodged a F.I.R. on

September 13, 2017. Since the F.I.R. was lodged after a delayed stage i.e. after 16 days, the enquiry in the matter was conducted which demonstrated that deceased Maya who was working as a Junior Clerk with Income Tax office was in coma for almost 16 days. After being shifted from Bonde Hospital, Amravati to Neuron Hospital, Nagpur, Maya died on July 28, 2017. During the enquiry since it is revealed that the accident has occurred, an offence punishable under Section 279, 304-A of the Indian Penal Code read with Section 134 and 177 of the Motor Vehicles Act came to be registered vide Crime No.441/2017 on September 13, 2017. The investigation thereafter was transferred to P.S.I. of the police station and during the enquiry it was discovered that auto rickshaw bearing registration No.MH-27-BW-0315 was involved in the accident. The auto driver was present in the Court and gave a statement that on the day of the accident a mild push / dash was suffered by the deceased because of his vehicle from the backside of the auto rickshaw and as such without taking much cognizance of the same, he left the spot. The investigation as such revealed that it is auto rickshaw which was responsible for the accident and accordingly, the driver of the said auto rickshaw was chargesheeted. The chargesheet is annexed with the Detailed Accident Report and appellant - insurance company is directed to tender written reasoned offer in terms of the judgment of Apex Court in the matter of *National Insurance Co. Ltd. V/s. Pranay Sethi and others*

reported in **2017 ACJ 2700**.

5] The insurance company raised an objection. As such Tribunal proceeded to pass a detailed order below Exh.1 on January 29, 2018. Ultimately, the Tribunal has worked out the compensation payable to the claimant to the tune of Rs.45,42,754/- which is questioned in the present appeal.

6] The learned Counsel for the appellant submits that the offence was initially registered against the unknown vehicle and was not against auto rickshaw and by way of after thought, in the offence false auto rickshaw was roped in. According to him, there is reference of one chit in the evidence of an eye witness, however, said chit was neither seized nor the person who was custodian of such chit was examined.

7] He would then urge that there is absence of the vehicle number in the F.I.R. or in the intimation given to the police station appellant cannot be held liable. He would then urge that eye witness to the incident - Pankaj Deshmukh has intention to support the claim of the claimant and therefore, his testimony is not reliable and should have been discarded. He would urge that without any justifiable reasons, higher rate of interest is awarded. As such, according to him, impugned award delivered by the Tribunal is not sustainable.

8] Learned Counsel Shri Mirza appearing for the respondent would support the judgment. According to him, the Tribunal has in appropriate words dealt with each of the contentions of the appellant and has delivered the judgment strictly in tune with the directions of the Apex Court. He would further urge that the contentions of the appellant as regards the award of unreasonable amount of interest is liable to be rejected as the award of interest depends on the facts and circumstances of the each case. As such he sought dismissal.

9] With the assistance of respective Counsel, I have perused the judgment delivered by the learned Chairman, Motor Accident Claims Tribunal, Amravati which is impugned in the present appeal.

10] In terms of Clause 25 of the Agreed Procedure issues were framed at Exh.6 and the I.O. was directed to produce all the witnesses including auto rickshaw driver of the offending vehicle.

11. There is evidence of three witnesses of the claimants whereas the appellant has examined Surveyor so also the Investigating Officer. The driver cum owner of the auto rickshaw has examined himself.

12] The Tribunal thereafter noticed that on July 13, 2017 when the accident occurred the deceased was

given dash by the offending auto rickshaw. Eye witness Pankaj Deshmukh whose mobile number was mentioned in the government hospital record Exh.10, took Maya to the hospital and given a note that he is relative of deceased. The said document Exh.10 also mentioned the name of witness Pankaj Deshmukh. The evidence of the auto driver has in categorical terms established the occurrence of the accident in question. The evidence of the doctor speaks that victim was suffering from Schizophrenia, however, upon analysis of further evidence would establish that the death of Maya was due to injury suffered in accident.

13] The Tribunal has in categorical terms analyzed the evidence of the said doctor, evidence of the eye witness Pankaj Deshmukh, who was having his workshop located nearby the spot of the accident, which has prompted the Tribunal to award compensation by accepting the testimony of these witnesses.

14] The Surveyor, who was examined by the appellant and cross-examined by the claimants, has not supported the case of the appellant, rather he was unable to give any satisfactory answer in the cross-examination as regards the contents referred by him in his report, after the Detailed Accident Report was received.

15] Though the learned Counsel for the appellant tried to find out fault with the judgment impugned, it is

worth here to observe that all the facets of the matter in question are very much considered and dealt with by the Tribunal in complete detail. The contentions canvassed by the appellant are dealt with by the Tribunal in its entirety.

16] The objections raised by the appellant insurance company at Exh.19 on 22nd February, 2018 and the written statement at Exh.20 was very much perused and dealt with by the Tribunal. The Tribunal went on to observe that the appellant insurance company has not discharged its duties mentioned in the Agreed Procedure. The Tribunal observed that it is one of the bounden duty of the insurance company to submit copy of the report of the Surveyor or the Analyzer to the concerned D.C.P. in case if the appellant notices any incorrect finding in the D.A.R., which the appellant insurance company has failed to. The Tribunal as such, in my opinion, was right in observing that the aforesaid failure has also prompted the Tribunal to pass a reasoned decision based on the D.A.R. and including based on other material on record.

In the objections and written statement Exhs.19 and 20, appellant - insurance company has come out with a case of denial of the cause of death and as such claimed that deceased Maya had fallen because of giddiness. The Tribunal has rightly held that the *onus* to prove the same was not discharged by the appellant - insurance company. The Tribunal has rightly

observed as such that the terms of Agreed Procedure was not adhered to and followed by the appellant - insurance company.

17] In the aforesaid background, the award of compensation is based on the monthly salary of the deceased Maya being a public servant, the age of the deceased has promoted the Tribunal to award compensation of Rs.45,42,754/-.

18] The award is based on a very detailed and analytical approach of the Chairman, Motor Accident Claims Tribunal, Amravati. No fault could be noticed in the judgment impugned. As such, the appeal must fail and is **dismissed** accordingly. No costs.

JUDGE