

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

First Appeal No.363 of 2008

Vijaykumar S/o Jamnaprasad Tiwari,
Aged Major, Occupation – Police S.I.,
C/o Police Station Kondhali,
Tahsil & Distt. Nagpur.

... Appellant

Versus

*1. ~~Smt. Yeshodabai Wd/o Pandurangji Umate,~~
~~Aged about 69, Occupation – Household.~~

(* Deleted as per Hon'ble Court's order
dated 3-12-2019)

2. Sheshrao S/o Pandurangji Umate,
Aged about 49 years,
Occupation – Service,
Dead, through L.Rs. :

2.a. Sitabai Wd/o Sheshrao Umate,
Aged about 55 years,
R/o Lahanuji Nagar, Wardha,
Tah. and District Wardha.

2.b. Sanjay S/o Sheshrao Umate,
Aged about 42 years,
R/o Nalwadi, Wardha,
Tah. and District Wardha.

2.c. Vijay S/o Sheshrao Umate,
Aged about 40 years,
R/o Erol, New Mumbai.

2.d. Dhananjay S/o Sheshrao Umate,
Aged about 30 years,
R/o Nalwadi, Wardha,
Tah. and District Wardha.

3. Baba S/o Pandurangji Umate,
Aged about 40 years,
Occupation – Service,
Dead, through L.Rs. :
- 3.a. Pratibha Wd/o Babarao Umate,
Aged Major, R/o. Masala
(Near Jijamata School),
Wardha,
Tah. and District Wardha.
- 3.b. Bhushan S/o Babarao Umate,
Aged Major, R/o Masala, Wardha,
Tah. and District Wardha.
- 3.c. Sau. Aachal W/o Saran Thakare,
R/o Sai Nagar, Wardha,
Tah. and District Wardha.
4. Surekha Wd/o Haribhau Deotare,
Aged about 40 years,
Occupation – Service.

All R/o Dattapur, Tahsil & District Wardha.
5. Oriental Insurance Co. Ltd.,
through its Branch Manager,
Jayashree Bhavan,
Wardha.

... Respondents

Smt. Anjali Joshi, Advocate for Appellant.
Shri Rohit P. Masurkar, Advocate, holding for Shri S.S. Ghate, Advocate
for Respondent Nos.1 to 4.
Shri D.N. Kukday, Advocate for Respondent No.5.

CORAM : V.M. DESHPANDE, J.

DATE : 22nd NOVEMBER, 2021

Oral Judgment :

1. The appellant has filed this appeal challenging the judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Wardha, on 29-6-2005. By the impugned judgment and

award, the claim petition filed by the respondent Nos.1 to 4 / original claimants was partly allowed and the present appellant was directed to pay compensation of Rs.1,07,062/- with interest at the rate of 9% per annum from the date of the petition, i.e. 7-6-2000, till its realization.

2. It appears that during the pendency of this appeal, the original claimant Nos.1, 2 and 3 passed away. Therefore, their legal representatives are brought on record. The original claimant No.4 is a widow and daughter of the deceased. The respondent No.5 is the Oriental Insurance Co. Ltd.

3. Smt. Anjali Joshi, learned counsel, appears for the appellant; Shri Rohit Masurkar, Advocate, holding for Shri S.S. Ghate, learned counsel, appears for the respondent Nos.1 to 4 / original claimants; and Shri D.N. Kukday, learned counsel, appears for the respondent No.5 - Insurance Company.

4. Smt. Anjali Joshi, learned counsel for the appellant, has strenuously urged before this Court that the learned Chairman of the Motor Accident Claims Tribunal has erred in directing the appellant to pay the amount of compensation, inasmuch as, according to her, the death of deceased Pandurangji Umate occurred due to his own mistake and the appellant at the relevant time was driving his

motorcycle cautiously. She, therefore, submits that the impugned judgment and award of the Motor Accident Claims Tribunal be quashed and set aside.

5. Shri D.N. Kukday, learned counsel for the respondent No.5 / Insurance Company, has submitted that the Insurance Company has no role to play at all, inasmuch as at the time of occurrence of accident, the motorcycle plying by the appellant was not insured with the Insurance Company. Even the learned counsel for the appellant, Smt. Anjali Joshi, has submitted that unfortunately on the date of accident, i.e. 27-10-2000, the motorcycle of the appellant, bearing registration No.MH-32/D-9065, was not at all insured with the Insurance Company. If that be so, the learned Chairman of the Tribunal, in my view, was absolutely right in exonerating the respondent No.5 / Insurance Company.

6. The accident took place on 27-10-2000. The fact of accident is not at all denied by the appellant. The case of the appellant is that when he was going on his motorcycle in a moderate speed from his house towards Police Station in the evening when the light was diffused, all of a sudden near the Circuit House the deceased came on his cycle and in spite of the fact that the appellant applied brakes of his motorcycle, the deceased could not control and dashed against the motorcycle and fell on the ground, resulting in head injury.

7. The record would reveal that Sheshrao, son of Pandurangji Umate, who was one of the claimants, lodged a report with Police Station Wardha (City) against the appellant. In view of his report, a crime was registered against the appellant vide CR No.353 of 2000 for the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code. It is to be noted here that though the appellant claimed that he had also filed a report, he could not prove it. Interestingly, the appellant is a Police Constable and still, for the reasons best known to him, he could not prove the report. The First Information Report is at Exhibit 36. Perusal of the record would show that these two documents are admitted by the appellant during the course of the trial before the Tribunal.

8. The spot panchanama is the most important document, inasmuch as, according to the appellant, when the deceased suddenly came in front of his motorcycle, he applied the brakes. The spot panchanama, which is a contemporaneous document, is conspicuously silent in respect of noting of tyre marks on the spot. In my view, therefore, the learned Chairman of the Tribunal was absolutely right in holding that the appellant was negligent while driving his motorcycle.

9. The claimants have proved various receipts showing that the deceased was admitted in the Central India Institute of Medical

Sciences, Nagpur. Though the incident took place on 27-10-2000, during the treatment, the deceased Pandurangji passed away on 18-11-2000.

10. In my view, the learned Chairman of the Tribunal has rightly applied the multiplier of 4, looking to the age of the deceased. From the documents placed on record, it is clear that the deceased was having agricultural property, as it could be seen from Exhibits 54 and 55 of the 7/12 extract. The learned Chairman has rightly reached to the conclusion that the annual income of the deceased must be of Rs.18,000/- and after deducting 1/3rd amount towards personal expenses of the deceased, the annual income for the family of the deceased would come to Rs.12,000/-.

11. The learned Chairman of the Tribunal, in my view, has rightly applied the multiplier and has in fact given the compensation on lower side, inasmuch as the learned Chairman has not dealt with the future income and loss of consortium. There is no cross-appeal filed by the claimants. This Court, therefore, need not touch on the said aspect.

12. The only relief that can be granted in this appeal is the correction in the date of the claim petition. The learned Chairman of the Tribunal has observed in clause No.2 of the operative portion as under :

“2. Petitioners do recover Rs.1,07,062/- from the N.A. No.1 (inclusive of no fault liability) at the rate of 9% per annum from the date of petition 7.6.2000 till its realization.”

The incident took place on 27-10-2000 and the claim petition was filed before the Tribunal on 7-6-2001. Therefore, it appears that there is a typographical error in the date of the petition, which needs to be corrected.

13. The learned counsel for the appellant has submitted that in view of the order passed by this Court on 7-9-2006 (Coram : A.H. Joshi, J.), 50% of the amount is deposited by the appellant and subsequently by the order dated 18-3-2010 (Coram : C.L. Pangarkar, J.), the said amount was withdrawn.

14. In view of above, the following order is passed :

The appeal is dismissed with the modification that the appellant is required to pay the amount of Rs.1,07,062/- with interest at the rate of 9% per annum from the date of the petition, i.e. 7-6-2001, instead of 7-6-2000, after making the adjustment in the amount already paid to the claimants.

15. Rule accordingly. No order as to costs.

JUDGE.

Lanjewar