

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

First Appeal No.1490/2008

New India Assurance Company Ltd.,
 through Divisional Manager, D.O. No.II,
 Udyam, West High Court Road, Dharampeth, Nagpur.

.... Appellant.

-Versus-

1] Vimal wd/o Shankarrao Pedulwar,
 Aged about 56 years, Occ.- Household,

2] Vikas s/o Shankarrao Pedulwar,
 Aged about 24 years, Occ.-Student,
 Both R/o.-Shubham Nagar, near Bhushan Nagar, Ranala Road,
 Yerkheka, Tahsil Kamptee, Distt- Nagpur.

3] Globe Transport Co. Pvt. Ltd,
 Fleet Owners & Transport Contractors,
 H/O :F-11/12, Sitaram Building Palton Road,
 Mumbai-400001.

.... Respondents.

 Mr. A.J. Pophaly, Adv for appellant.
 Mr. G.D. Asole, Adv for resp. nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J

DATE : 12-01-2021.

Oral Judgment

This is an appeal under Section 173 (1) of the Motor Vehicles Act, 1988 (for short, 'the Act of 1988'), challenging the judgment and award dated 20-02-2008 in M.A.C.P No.268/2002. By the impugned judgment, the Claims Tribunal, Nagpur, has partly allowed the application filed under Section 166 of the Act of 1988 and awarded compensation of Rs. 2,15,700/- to respondent

no.1 with interest at the rate of 7.5 % per annum from the date of application i.e 02-04-2002, till the date of realization.

2. Respondent no.1 is the mother of deceased Rajesh Pedulwar, who expired in an accident on 01-12-2001. The deceased Rajesh and Suresh Chopkar were the pillion riders on the Scooter bearing registration No. MH-31/F-2825, which was driven by one Rajesh Hatwar. While they were proceeding from Kanhan to Kamptee, a Truck-Trailer bearing registration No.GJ-1/AT-649 which was driven in a rash and negligent manner, came from the opposite direction and dashed against the Scooter. Both the pillion riders died on the spot whereas Rajesh Hatwar sustained grievous injuries.

3. Respondent no.1 claimed that the accident was caused due to the rash and negligent driving of the rider of the truck. Respondent no.1 claimed that deceased Rajesh Pedulwar was 22 years of age. He was working as a bicycle and rickshaw mechanic and earning Rs. 2400/- per month. Respondent no.1 who claimed to be dependent on the income of the deceased, filed an application under Section 166 of the Act of 1988 claiming compensation of Rs. 3 lakh.

4. The appellant-Insurance Company contested the said Claim Petition mainly on the ground that the accident was caused due to rash and

negligent driving by the rider of the Scooter. The appellant-Insurance Company further claimed that the rider of the Scooter was not holding a valid driving licence and claimed that they are not liable to indemnify the insured in view of breach of terms and conditions of the policy.

5. The Tribunal after considering the evidence adduced by the respective parties held that the accident was caused due to rash and negligent driving by the driver of the truck. The Claims Tribunal considered the income of the deceased at Rs. 2400/- per month. Upon deducting one third towards personal expenses and applying the multiplier of 11, the Tribunal computed the loss of dependency at Rs. 2,11,200/-. The Tribunal granted compensation of Rs. 2500/- towards the loss of estate and Rs. 2000/- towards funeral expenses. Thus, the Tribunal granted total compensation of Rs. 2,15,700/- which was inclusive of 'no fault liability' under Section 140 of the Act of 1988.

6. Mr. A.J. Pophaly, learned Counsel for the appellant submits that the Tribunal has grossly erred in holding that the accident was caused due to rash and negligent driving of the driver of the Truck. He submits that the Tribunal has not considered the Panchanama and has overlooked the fact that the Scooter was driven with two pillion riders. Learned Counsel therefore claims that the rider of the Scooter was guilty of contributory negligence. He also contends that the Scooter was driven without valid licence and hence the appellant-Insurance Company is not liable to indemnify the insured for breach of terms and conditions of the policy.

7. Learned Counsel for respondent no.1 submits that the crime was registered against the driver of the truck under Sections 279 and 304-A of the Indian Penal Code. He submits that the driver has not stepped in the witness box and without there being any material, no negligence can be attributed to the rider of the Scooter. As regards the quantum of compensation, learned Counsel for respondent no.1 submits that the compensation awarded by the Tribunal is on lower side and does not warrant any interference.

8. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. The only challenge raised in the appeal is to the findings recorded on the issue of rash and negligent driving. At the outset, it may be mentioned that in the connected First Appeal No.1492/2008, arising from the same accident this Court (Coram- V. M. Deshpande, J) has confirmed the findings of the Tribunal that the accident was caused due to rash and negligent driving by the driver of the truck and rejected the contention that it was a case of contributory negligence. The contention of the appellant-Insurance Company that the rider of the Scooter was not holding a valid licence has also been negated by this Court. Learned Counsel for the appellant-Insurance Company concedes that the said judgment is not challenged. The said judgment having attained finality, the

Insurance Company cannot be heard to say that the accident was caused due to rash and negligent driving or due to the contributory negligence of the rider of the Scooter. The appellant-Insurance Company also cannot be absolved of its liability of indemnifying the insured on the ground of breach of terms and conditions of the policy. Under the circumstances, the appeal has no merits and it is hereby dismissed.

9. The amount deposited by the appellant-Insurance Company along with the interest accrued thereon be paid to respondent no.1 as per the impugned judgment and award of the Claims Tribunal.

(SMT. ANUJA PRABHUDESSAI, J)