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

FIRST APPEAL NO. 50 OF 2011

APPELLANT: AS ON R.A.	Oriental Insurance Co. Ltd. through its Regional Manager, Regional Office, Dharampeth, Nagpur.

... Versus ...

RESPONDENTS: AS ON R.A.	**1**. Smt. Vidya Dinesh Gavankar aged 41 yrs, Occu: Household
	2. Ankush Dinesh Gavankar Aged 23 yrs, Occu: Education,
	3. Prashant Dinesh Gavankar, Aged 21 yrs, Occu: Student,
Ref. to Registrar's order dtd. 14/9/12 Matter is abated against R-4.	**4.** Madhukar Laxman Gavankar, Aged 72 yrs, Occu: Nil,
	5. Smt. Gitabai Madhukar Gavankar Aged 69 yrs, Occu: Nil All R/o Nimkarda, Teh- Balapur, Dist-Akola.
	6. Santosh Balu Kasurkar, Aged 25 yrs, Occu: Business, R/o Takli, Post Nimkarda, Teh-Balapur, Dist-Akola.

Shri A.M. Quazi, Advocate for the Appellant.
Shri K.S. Malokar, Advocate for Respondent Nos.1, 2, 3 and 5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 19th JANUARY, 2021

ORAL JUDGMENT:-

The Appellant – Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (in short "M.V. Act") challenging the judgment and award dated 7th August, 2010 passed by Claims Tribunal, Akola in M.A.C.P No.115/2008.

02] The brief facts necessary to decide this appeal are as under:-

Respondent Nos.1 to 5, who shall be hereinafter referred to as the claimants, had filed an application under Section 166 of M.V. Act, claiming total compensation of Rs.7,00,000/ on account of death of Dinesh. Claimant No.1 is the widow, Claimant Nos.2 and 3 are the children and Claimant Nos.4 and 5 are the parents of the deceased Dinesh, who suffered fatal injuries in a motor vehicular accident on 20/02/2008, involving an auto rickshaw bearing Registration No.MH-30-P-6598. It was alleged that the said rickshaw had turned turtle due to rash and negligent driving by the driver of the rickshaw.

03] The claimants stated that said Dinesh was an agriculturist and also had dairy business. He was earning Rs.8,000/- to 9,000/- per month from dairy business and was deriving an income of Rs.1,25,000/- per annum as agricultural income. The auto rickshaw involved in the accident was driven and owned by Respondent No.6 and was insured by the Appellant – Insurance Company. They, therefore, claimed that the Appellant and the Respondent No.6 are jointly and severally liable to pay the compensation of Rs.7,00,000/-.

04] The Respondent No.6 did not contest the proceedings. The Appellant claimed that the driver was not holding a valid driving licence and it was not liable to indemnify the insurer for breach of terms and conditions of the policy. Based on the pleadings, the Tribunal framed the following issues:-

1. *Do the petitioners prove that on 20.02.2008 the deceased Dinesh Madukarrao Gavankar died in an accident took place due to rash and negligent driving of the auto bearing registration number MH-30/P-6598 as it was turned turtle?*

2. *Do the petitioners prove that they are entitled to compensation? If yes, to what extent and from whom?*

3. *What order?*

05] Upon considering the evidence on record, the Claims Tribunal held that the accident was caused due to rash and negligent driving by the driver of the auto rickshaw. The Tribunal also recorded a finding that the licence issued to the driver of the auto rickshaw had expired on 6th January, 2008 and that it was renewed only on 22nd February, 2008 and was valid up to 21st February, 2011. The Tribunal observed that the driver had no effective licence on the date of the accident and hence there was breach of terms and conditions of the Policy. Relying upon the decision in the case of ***New Indian Assurance Company Limited Vs. Kusum & Others*** reported in ***II (2010) ACC - 518 (SC)*** and ***Ishwar Chandra and Others Vs. Oriental Insurance Co. Ltd. and Others*** reported in ***2007 (2) T.A.C. 393 (S.C.)***, the Tribunal directed the

Insurance Company to pay the compensation and to recover the same from the owner/driver of the auto rickshaw.

06] As regards the quantum of compensation, the Tribunal assessed the income of the deceased as Rs.6,000/- per month from agriculture and dairy farming. Upon deducting 1/3rd towards personal expenses and applying multiplier 11, the loss of dependency has been assessed as Rs.4,40,000/-. In addition, the Tribunal has awarded compensation of Rs.2,000/- towards funeral expenses and Rs.8,000/- towards loss of consortium. The Tribunal has thus awarded total compensation of Rs.4,50,000/-. Being aggrieved by the judgment and award, the Appellant – Insurance Company has preferred this appeal under Section 173 of the M.V. Act.

07] Learned counsel for the Appellant submits that the insured having committed breach of terms and conditions of the policy, the Tribunal was not justified in fastening the liability on the Appellant – Insurance Company. He further submits that the claimants had not proved the income of the deceased and that the Tribunal had erred in considering the monthly income of deceased as Rs.6,000/- per month.

08] Learned counsel for the claimants submits that the policy covers third Party Risk. He has relied upon the decision of the Apex Court in ***Singh Ram Vs. Nirmala and Ors.*** reported in ***AIR (2018) SC 1290*** to contend that the Insurance Company cannot be absolved of its duty of satisfying the judgment and award in favour of the 'third party'. He submits that the compensation awarded is meager and hence, the judgment does not warrant any interference.

09] Having perused the records, the question which primarily falls for consideration is whether the Tribunal has committed any error in directing the appellant – Insurance Company to pay the compensation and recover the same from the insured?

10] There is no challenge to the finding that the death of Dinesh was due to the rash and negligent driving by the driver of the offending vehicle. It is on record that as on the date of the accident, the licence issued in favour of the driver had expired and that he had not renewed the same. There is no error in the finding that he was not holding an effective and valid licence as on the date of the accident. Under such circumstances, the direction of 'Pay and Recover' is in accordance with the judgment of the Apex Court in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh & Others*** reported in ***AIR 2004 SC 1531***.

11] As regards the quantum of compensation, the evidence on record clearly indicates that the deceased was around 50 years of age. The evidence on record further indicates that he was having an agricultural land and was also in dairy business. Though, there is no evidence to prove the exact income of the deceased, an amount of Rs.6,000/-, which has been considered by the Tribunal as monthly income cannot be considered to be exorbitant and appears to be reasonable amount. The Tribunal has computed loss of dependency after deducting 1/3rd towards personal expenses and on applying the correct multiplier, upon considering the age of the deceased. There is no manifest error in assessing the loss of dependency.

12] Under the circumstances, the appeal has no merits and is accordingly dismissed.

13] It is stated that the Appellant – Insurance Company has deposited the compensation. It is further stated that Respondent No.4 has expired. Hence, 10% of the compensation along with proportionate interest accrued thereon is ordered to be paid to respondent No.5, the mother of the deceased, 40% of the compensation along with proportionate interest accrued thereon be paid to respondent No.1, the widow of deceased and the balance 50% compensation with proportionate interest accrued thereon be paid proportionately to respondent Nos.2 and 3, being the sons of the deceased.

14] The appeal as well as the civil applications are disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)

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