

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 145 OF 2003

M/s New India Assurance Co.Ltd.,)
 having its registered and Head)
 Office at 87 M.G. Road New India)
 Assurance Building Fort Mumbai 400)
 001, Branch Office at Jilla Peth)
 behind Dadhiwala Bunglow, Co-op)
 Punchmukhi Hanuman Temple, Jalgaon,)
 and Division Office at Rajendra)
 Prasad Road, Ajay Engg. Compound,)
 Aurangabad 431 005 through it's Sr.)
 Divisional Manager)
 Dr. Shrikant Baliram Aney, aged)
 about 50 years.) ...Appellant

Versus

- | | |
|--|---------------------------------------|
| 1. Smt. Jaibai w/o Narayan Warake)
(since deceased) her name is)
deleted as per order passed)
Ex. 32.) | |
| 2. Madhukar Narayan Warake, age)
34 Occ. Service R/o. Bamnod,)
Tq. Yawal, Dist. Jalgaon.) | |
| 3. Bhagwat Narayan Warake,)
Age : 32, Occ : Service,)
R/o. Bamnod, Tq. Yawal, Dist.)
Jalgaon.) | ...Orig.
Claimants
No. 1 to 4 |
| 4. Suresh Narayan Warake,)
Age : 28, Occ: Service,)
R/o. Bamnod, Tq. Yawal, Dist.)
Jalgaon.) | |
| 5. Jagannath Timma Pujari,)
Age : 28 Yrs, Occ : Service,)
Driver, R/o. Sai Niwas Room)
No. 1, Opposite to Hrun)
Garments, Saki Vihar Road)
Tunge Village Mumbai -72.) | ...Orig.
Respondents
No. 1 to 3 |

6. The Manager Abdul Raheman)
Transport Co., Opposite to the)
petrol pump, Navipeth Jalgaon,)
Tq and Dist. Jalgaon.)
)
7. The Manager, The Oriental)
Insurance Co. Ltd.)
(Name of this respondent is)
deleted as per order on Exh.)
29).) ...Respondents

Mr. V.N. Upadhye, Advocate for Appellant.

Mr. S.S. Bora, Advocate for Respondent Nos. 2 to 4.

CORAM : R.M. JOSHI, J.

RESERVED ON : DECEMBER 09, 2022
PRONOUNCED ON : DECEMBER 19, 2022

JUDGMENT

1. M/s. New India Assurance Co. Ltd/Appellant, being aggrieved by the judgment dated 25th September, 2002 passed by Member, MACT, Jalgaon in MACP No. 220 of 1993, has preferred this Appeal under Section 173 of the Motor Vehicle Act.

2. The facts which led to the filing of MACP No. 220 of 1993 are as under:

On 05.05.1993 at about 08.00 to 08.30 am on Mumbai Ahmednagar highway near Sakegaon village an accident occurred involving truck bearing no. MWD 9598 and car. It is the case of the claimants that the said

accident has occurred due to the rash and negligent driving of the truck by its driver. In the said accident Narayan, driver of the car died. Police papers filed along with the claim Petition however indicate that offence came to be registered against driver of the car for rash and negligent driving of the vehicle.

3. At the relevant time, truck was validly insured with Appellant. Appellant/Insurer was impleaded as Respondent on 16.07.2002 at the instance of original claimants though claim Petition was filed on 04.11.1993.

4. Learned Tribunal by passing impugned judgment and award held Appellant/Insurer and the owner of the truck jointly and severally liable to pay compensation of Rs. 75,000/- along with interest from the date of filing of the Petition i.e., from 04.11.1993 till realization of amount. Appellant has challenged the said judgment on the grounds specifically mentioned in the Appeal memo, which mainly are findings recorded of negligence of driver of truck in occurrence of accident and interest granted on amount of compensation from 04.11.1993 and not from date of joining of the

Appellant to claim Petition as respondent.

5. Learned Advocate for the Insurer/Appellant argued that since the time of filing of the claim Petition present Appellant was not made party Respondent and therefore, the learned Tribunal was not justified in directing the Appellant to pay interest on the amount of compensation since that time and according to him, at the most interest could have been granted from 16.07.2002 i.e., the date on which Appellant was impleaded as party Respondent to the claim Petition. He also drew attention of this Court to the evidence on record and in particular, FIR (Exhibit 38) which according to him shows that the accident in question has occurred due to negligence of driver of the car against whom offence came to be registered and thus, findings recorded against truck driver of his negligence are not sustainable.

6. Learned Advocate for the Claimants/Respondents on the other hand submitted in fact, Tribunal committed error in not considering the loss of dependency for the purpose of computation of compensation. To support his contention, reliance is placed on judgment of the

Hon'ble the Apex Court in the case of National Insurance Company Limited Vs. Birendra and Others, reported in MANU/SC/0028/2020.

7. He also canvased that even without filing Appeal or cross-objection in the present Appeal, the enhancement of the compensation can be sought by the Respondents. To substantiate this submission, he placed reliance on the judgment of this Court in the case of The New India Assurance Co. Ltd Vs. Ujjawala and Others, reported in MANU/MH/2610/2019. To counter this argument, learned Advocate for the Appellant placed reliance on judgment of this Court in the case of First Appeal No. 873 of 2004 (United India Insurance Co. Ltd Vs. Surekha Kisan Shirke and Others).

8. As far as the challenge to the impugned judgment to the extent of finding recorded of negligence on the part of the driver of the truck is concerned, perusal of the record shows that FIR (Exhibit 38) is lodged by the driver of the truck alleging negligence against deceased driver of the car. As against this, claimants have examined Sanjay (Exhibit 46), who was occupying the car at the time of

occurrence of the accident. This witness has candidly narrated manner in which accident in question has occurred and has specifically deposed on oath about car being driven by the deceased Narayan with moderate speed and the truck coming from opposite direction in high speed. He has further deposed that the truck overtook another truck and came to the wrong side and gave dash to the car, resulting into accident. From cross-examination of this witness nothing could be elicited to discard his testimony about manner in which accident has occurred. Thus, the claimant by examining the eye witness to the accident has proved that the car was driven with the moderate speed at the relevant time, it was driver of the truck who drove truck in high speed. Once such evidence is brought on record by the claimant, the onus has shifted upon the Respondents to prove otherwise. No evidence however is led by Appellant or any other Respondent to rebut the evidence about causing of accident brought on record on behalf of claimants. Learned Tribunal has rightly discarded FIR (Exhibit 38) in the impugned judgment holding that said report is given by the driver of the truck and since the driver of the car being deceased was not

available to counter the said statement, it cannot become proof of negligence on the part of deceased in occurrence of accident. This finding of Tribunal being in consonance with evidence on record cannot be disturbed.

9. As far as the awarding of interest from the date of filing of the claim Petition is concerned, admittedly Appellant was joined as Respondent on 16.07.2002. Thus, for no fault of the present Appellant it cannot be saddled with the interest from the date of filing of the claim Petition. The impugned judgment, therefore, deserves modification to the extent of denial of interest to the Appellant on the amount of compensation for the period from 04.11.1993 to 15.07.2002. The Appellant, therefore, would be liable to pay interest with effect from 16.07.2002 till realization of the amount.

10. Exception is sought to be taken to the judgment by Respondents for denial of compensation for loss of dependency by placing reliance on the judgment in case of National Insurance Company Ltd. Vs. Birendra and Ors (cited supra). In the said judgment Hon'ble the

Apex Court has observed in para 15 that *"it would be bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only"*. In the said case before Apex Court the evidence on record suggested that the claimants were working as agricultural labourer on contract basis and were earning meager income, in that sense they were largely dependent on the earning of the mother.

11. No doubt in the instant case it is pleaded by the Petitioners in claim Petition that they were dependent on deceased father, however, no evidence is led to that effect. Perusal of the testimony of Madhukar (PW 1) does not show that he and other brothers were staying together with deceased. In his testimony, it is specifically claimed that they all three brother are in service and in fact this witness was in service for last 20 years. He does not make any specific statement about he or other claimants being dependent upon deceased father at least to some extent.

As far as wife of deceased is concerned, she died during pendency of the claim Petition. Learned Tribunal while passing impugned judgment has rightly considered the said facts and denied compensation on account of loss of dependency.

12. In absence of any specific case being made out by the claimants about at least partial dependency of them on deceased, no compensation could have been granted by the learned Tribunal for loss of dependency. What could have been granted to them was compensation on conventional head and which is quantified at Rs. 75,000/-. In the facts and circumstances of the case, the said quantification is just and proper.

13. In view of the above discussion, the following order:

ORDER

(a) First Appeal is partly allowed.

(b) Clause (ii) of the impugned judgment and order dated 25th September, 2002 is modified as under:

Respondent Nos. 1 to 3 are jointly and severally liable to pay the amount of Rs. 75,000/- as compensation along with

interest @ 9% p.a. Respondent Nos. 1 and 2 are liable to pay interest on this amount from date of registration of Petition till realization. Respondent No. 3 shall be liable to pay interest from 16.07.2002 till realization.

- (c) Rest of order to remain unchanged. Parties to bear their costs.

(R.M. JOSHI, J.)

Malani