

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.57 OF 2018

Reliance General Insurance Co. Ltd. .. Appellant
through its Manager Legal
Mr.Khanjan Joshi

Versus

Sunil Bhau Mhatre (through Special .. Respondents
POA Respondent No.3) & Ors.

...

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant.

Mr.Yogesh Rande for the Respondent Nos.1 to 3.

...

CORAM: BHARATI DANGRE, J.

DATED : 18th APRIL, 2022

P.C:-

1. Heard the learned counsel for the appellant and the learned counsel for the respondents/claimants.

On perusal of memo of appeal, it can be discerned that the Insurance Company has assailed the judgment passed by the M.A.C.T. Pune in M.A.C.P. No.777 of 2013 on two counts; firstly being that the Tribunal has erred in fixing the responsibility upon the opponent No.2 jointly and severally to the extent of 70% of the compensation awarded and secondly on the count, that the driver of the vehicle in which the deceased was travelling did not possess a valid driving licence.

2. With these arguments being advanced, I have gone through the impugned judgment and the reasons contained therein, which resulted in allowing the claim filed by the claimants by directing opponent Nos. 1 and 2 to be jointly and severally liable for the 70% amount of the compensation whereas opponent Nos.3 and 4 are held jointly and severally liable to the extent of 30% of compensation, the total compensation being worked out as Rs.22,93,800/-, including the compensation awarded under Section 140 of the Motor Vehicles Act alongwith interest at the rate of 9% p.a. from the date of petition till it's realization.

3. The accident, which resulted into institution of the claim, took place on 23/06/2013, when deceased Tanvi, daughter of applicant Nos.1 and 2 and sister of applicant No.3, was travelling in Toyota car bearing registration No.MH-14-CU-1515 alongwith her friends. The car was being driven in excessive speed. While it was travelling on Pimpri-Pune route and when it reached near, Nigdi Jakat Naka in front of Hindustan Petroleum Office, a Container bearing registration No.MH/RJ/01/ GA/7365, which was parked negligently on the left side of the road facing towards Mumbai, went unnoticed and the driver of the car rammed into the container. The deceased sustained multiple injuries and she succumbed to the same on 23/06/2013 in the hospital. Even the driver of the car died in the accident and rest of the occupants sustained several injuries. The accident resulted in registration of offence under Section 304-A, 337, 338, 427 of the Indian Penal

Code and under Section 122, 109/177, 134(b) of the Motor Vehicles Act vide C.R.No.174 of 2013.

4. The claim petition instituted by the parents of the deceased as well as her sister, under Section 166 of the Motor Vehicles Act sought compensation of Rs.37 Lakhs taking into consideration that Tanvi was studying in Final year of B.D.S. in D.Y.Patil College, Pimpri Pune and after completing the B.D.S., she would have earned Rs.15,000/- to Rs.20,000/- per month which would have gradually increased upto Rs.25,000/-. The car was owned by Surendra Gopaldas Chabra i.e. opponent No.3 and was insured with the opponent No.4. As far as the container is concerned, one Rameshwar i.e. opponent No.1 is the owner and the vehicle was insured with the appellant.

5. In the claim petition, the owner of both the vehicles, which were involved in the accident and the respective insurance companies with whom the respective vehicles were insured were also added as the respondents and the amount of compensation was claimed from them.

6. In order to substantiate the claim, applicant No.3 stepped into the witness box. The opponent Nos.1, 3 and 4 did not respond to the summons and the evidence was closed against them. As far as opponent No.2 is concerned, it filed the evidence in chief and closed the evidence.

The claimants relied upon the police papers of the crime, which was registered on the accident taking place, including the FIR, spot panchnama, inquest panchnama, accident report form etc. Apart from this, medical papers as well as the birth certificate and the relevant educational documents pertaining to deceased Tanvi were also placed on record. As far as the present appellant is concerned, it is the Insurance Company with whom the container was insured, it disputed the claim by specifically contending in the written statement that the container was parked on the extreme side of the road and it's indicators were on and the blame was put on the offending car in which the deceased was travelling and it was averred that the car was being driven in high and excessive speed.

7. The aforesaid evidence of the appellant did not find favour with the Tribunal on two counts; firstly being that no independent witness was examined to that effect, when it was always open to the Insurance Company to examine the driver of the container, who could have been the best person to depose about the alleged rash driving of the car in which the deceased was travelling. Apart from this, by making reference to the spot panchnama, the learned judge derived a conclusion that it is not indicated therein that the container was operating with indicator when it was parked nor indication like installation of flags etc. were there around the container. Recording that parking of container on highway was highly dangerous and it was nothing, but short of negligence, in parking it without any indicator and this is

precisely the reason why the car in which the deceased was travelling, could not avoid the collision.

Based on this narration of incident, which has come before the Tribunal, the Tribunal held that the driver of the car in which the deceased was travelling, is liable for contributory negligence, since he was also driving in excessive speed, but has chosen to restrict his liability to 30% whereas the owner of the container and the Insurance Company is fastened with liability of 70%.

8. On recording reasoning and on consideration of the actual evidence, which has come before the Tribunal through the witness of the claimants as well as through the accident papers, I do not find any reason to interfere with the finding rendered by the Tribunal, that the owner of the car is responsible for contributory negligence, but is only liable to contribute 30% amount of the compensation and the container which owed a major responsibility of parking the vehicle right in the middle of the road in the night, without any indicators, is held to be liable for 70% of the compensation. I am not, therefore, inclined to interfere with the said aspect of the matter.

9. As far as the second ground of Mr.Mehta, which has been raised in the appeal in respect of the driver of the offending car not holding a valid licence is concerned, the Tribunal has rightly recorded that no evidence to that effect has been brought on record.

10. As far as the quantum of compensation is concerned , I do not think that there is any scope for interference, since the Tribunal has awarded the compensation under the head by applying the law laid down in the case of **Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma & Anr. (2014 ACJ 2648)** and considering the age as well as the income of the deceased and has calculated the loss of dependency and also awarded an amount of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses.

The quantum of compensation awarded, being 'just and fair', do not warrant any interference.

Resultantly, in the wake of the aforesaid discussion, the appeal does not deserve any consideration and it is accordingly dismissed.

11. On dismissal of the appeal, the Tribunal shall permit the applicants/original claimants to appropriate the amount of compensation, which is lying with the Tribunal alongwith interest accrued thereupon.

The statutory deposit of Rs.25,000/- which is deposited before this Court, shall be remitted to the Tribunal, and it shall be permitted to be appropriated by the appellant.

(SMT. BHARATI DANGRE, J.)