Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.568 OF 2020

Reliance General Insurance Company Limited.]
Nayagam Cross Road, 1st Floor,]
Opp. Royal Industrial Estate,]
Mumbai - 400 031.] Appellant

(Original Ins. No.2)

Versus

1. Laxmi Shankar Waghmare]
   Age: 35 years, Occ - Housewife,]

2. Mangal Shankar Waghmare]
   Age: 32 years, Occ : Housewife,]

3. Damu Navshya Waghmare]
   Age: 55 years, Occ. Nil.]

4. Raji Damu Waghmare]
   Age: 50 years, Occ: Nil,]

5. Sugandha Shankar Waghmare]
   Age: 18 years, Occ: Household,]
   All R/A. Mukkam - Durshet]
   Post: Adivasi Wadi,]
   Taluka: Khalapur, Dist. Raigad,]

6. Mangesh R. Dalvi]
   R/A: Mukkam Eksol,]
   Post: Chichowli,]
   Karjat, Taluka : Karjat,]
   Dist : Raigad.]

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Ms. Shalini Shankar, for Appellant.

Mr. Amey C. Sawant, for Respondents No.1 to 4.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 17TH FEBRUARY, 2022.

JUDGMENT:

1. This is an appeal by the insurer-Reliance General Insurance Company Limited challenging the judgment and award dated 12th June, 2017 rendered by the Member, Motor Accident Claims Tribunal, Raigad at Alibaug in Motor Accident Claims Petition No. 197 of 2015 by which the respondents-claimants who were the legal representatives of deceased Shankar Damu Waghmare (for short "deceased") have been awarded compensation of Rs.10,51,250/- (Rs. Ten Lakh, Fifty One Thousand Two Hundred Fifty only) on account of unfortunate death of deceased Shankar in a motor vehicle accident which occurred on 8th May, 2015.

2. Facts are as follows.

3. On 8th May, 2015 around 8.00 p.m deceased Shankar was riding his Motorcycle bearing registration No. MH - 46-M-1546 by *Khopoli Paali* Road at *Mouje Pedli* Village. When he reached in the boundary of Village *Paali* in front of State Bank, offending Pickup Tempo bearing Registration No. MH-46-AF-748 came from opposite direction and gave a violent dash to the motorcycle of the deceased, since the Driver of the offending tempo lost his control over the said vehicle. Due to rash and negligent driving of the offending tempo by it's Driver, the accident occurred resulting into instantaneous death of the deceased.

4. The deceased was 40 years old at the relevant time. The Driver of the offending tempo had been booked by *Paali* Police Station. A report came to be lodged against the Driver of the offending tempo. The Investigating Officer visited the spot. F.I.R is at **Exhibit 19**. The Investigating Officer had drawn a spot *panchanama* **Exhibit 20** and inquest **Exhibit 21**. Postmortem report is proved at **Exhibit 23**. Offending vehicle is registered with the appellant and it's policy is proved at **Exhibit 24** which was valid on the date of the accident.

5. A Claim Petition bearing No.197 of 2015 came to be filed by the respondents in M.A.C.T, Raigad-Alibaug against respondent No.6 - Mangesh R. Dalvi and appellant - Reliance General Insurance Company Limited.

6. Despite service of notice, respondent No.6 - Mangesh R. Dalvi did not appear and, therefore, the claim proceeded *ex-parte* against him.

7. The Appellant-insurer had filed say at **Exhibit 16** and resisted the claim. The appellant had denied the age and income of the deceased as contended in the application.

8. Widow of the Deceased - Laxmi Waghmare has sworn an affidavit **Exhibit 17** in support of the claim.

9. After framing necessary issues at **Exhibit 10** and considering the contentions of the parties, the learned Member by the impugned judgment and award directed an amount of Rs.10,51,250/- with 9%

interest from the date of filing of the application to be paid by the appellant-insurer and respondent No.6 - Mangesh R. Dalvi jointly and severally to the respondents-claimants.

10. Aggrieved by the Award passed by the learned Member, the appellant-insurer has preferred the present appeal mainly on the ground that quantum of the compensation awarded by the Tribunal is highly exaggerated, inflated and exorbitant. As such, the appellant has prayed for setting aside the impugned judgment and award.

11. I heard Ms. Shalini Shankar, learned Counsel for the appellant and Mr. Amey Sawant, learned Counsel for respondents No.1 to 4.

12. Though there was no eye witness, combine reading of the spot *panchanama*, F.I.R and the inquest would indicate that the accident had occurred due to rash and negligent driving of the Driver of the offending tempo. *Panchanama* indicates that motorcycle of the deceased was lying on the left side of the road with total damage to it's front portion. The offending tempo was found facing towards village *Paali* and the head light of the driver's side was found broken including the right side front portion. In view of the maxim *res ipsa loquitur,* it is apparent that the tempo Driver drove the tempo in a rash and negligent manner to the wrong side of the road resulting into a violent dash to the motorcycle of the deceased, resulting into his death.

13. The learned Counsel for the appellant strenuously urged to allow the appeal mainly on the ground that the Tribunal had awarded compensation which is on quite higher side by ignoring the

fact that there is no satisfactory evidence as regards income of the deceased. I am afraid, I cannot buy the arguments of the learned Counsel for the simple reason that as per the affidavit of the widow of the deceased, the deceased was serving and was earning Rs.6,000/- per month. It is of common knowledge that even in the year 2015 when the accident had occurred, person working on daily wages used to get at least 150 to 200 rupees per day. As such, the income taken into consideration by the learned Member, M.A.C.T to the extent of Rs.6,000/- per month is just and proper. Even if 1/4 of the income of the deceased is considered for his personal notional expenses, the loss of dependents had correctly been taken into account and accordingly multiplier of 15 was applied. The learned Member has rightly observed about expenses which might have been incurred by the legal representatives of the deceased after his death.

14. The learned Member after considering the factors of loss of consortium, love and affection etc arrived at a just figure of Rs.10,51,250/-. This amount, according to me, is the just compensation awarded to the respondents - legal representatives of the deceased. Since the offending vehicle was insured with the appellant at the time of the accident, the appellant cannot be absolved from it's liability to indemnify the insured while awarding compensation to the legal representatives of the deceased.

15. The compensation awarded by the Tribunal is adequate, fair and equitable on the facts and circumstances of the case. It cannot be said to be a bonanza to the respondents/claimants. The law on the aspect of compensation to be awarded to the survivors of the deceased is no more *res integra* in view of the well-known judgment

of the Supreme Court in case of **National Insurance Company Limited Vs. Pranay Sethi, 2017 ACJ, 2700**.

16. Consequently, the appeal is devoid of merits and hence needs to be dismissed. Accordingly, following order is passed.

: **ORDER** :

Appeal is dismissed.

[PRITHVIRAJ K. CHAVAN, J.]