IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 689 OF 2016

The Oriental Insurance Co, Ltd.
Thr. Motor Third Party Claim Hub ..Appellants.

v/s.

Smt. Daxa Dilip Modi & Ors. ..Respondents

with
INTERIM APPLICATION NO. 10362 OF 2022
IN
FIRST APPEAL NO. 689 OF 2016

The Oriental Insurance Co, Ltd.
Thr. Motor Third Party Claim Hub ..Appellants.

v/s.

Smt. Daxa Dilip Modi & Ors. ..Respondents

Mr. Devendranath Joshi for the Appellants.
Mr. Amol Gatne i/b. Swati Mehta for the Respondents.
Ms. Tanaya Goswami, AGP for the State.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 29th NOVEMBER, 2023.

P.C.

1. The Appellant Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, raising challenge to the impugned judgment and award dated 17.10.2015 in Claim Application No. 1265 of 2009, passed by the Motor Accident Claims Tribunal, Mumbai.

2. By the impugned judgment and award, the Claims Tribunal allowed the application under Section 166 of the Motor Vehicles Act filed by the respondent nos.1 to 3, original claimants and awarded compensation of Rs.76,55,738/- with interest at the rate of 9% per anum from the date of the petition till final realization.

3. Brief facts necessary to decide this appeal are as under:

The respondent nos.1 to 3, who shall hereinafter be referred to as the claimants had filed application under Section 166 of the Motor Vehicles Act in view of death of Dilip Modi, who died in a motor vehicular accident on 10.10.2008, involving bus No. MH-43-H-7324 and a truck bearing No. MH-04-BU-8152. It was the case of the claimants that the deceased was a passenger in the bus. It is stated that while the bus had reached near Cotton Green, the offending truck came from the opposite direction and dashed against the bus towards the driver side. Said Dilip and several other passengers sustained injuries in the said accident. Dilip expired while undergoing treatment in the hospital.

4. The claimants stated that the deceased was 55 years of age and was enjoying good health. He was employed with Reliance Industries and was earning Rs.8,98,901/- per anum. The claimants stated that

they were solely dependent on the income of the deceased. It is the case of the claimants that the accident was caused due to rash and negligent driving by the driver of the offending truck. The said truck was owned by the respondent no.4 and was insured by the appellant herein. The claimants therefore filed an application under Section 166 of the Motor Vehicles Act, claiming total compensation of Rs.1 Crore from the owner and insurer of the offending truck.

5. The Respondent No.4 did not contest the proceedings. The appellant-Insurance Company raised the plea of composite negligence and claimed that the petition was not maintainable for non-joinder of owner and the insurer of the bus involved in the accident. The appellant denied that the accident was caused due to rash and negligent driving of the driver of the bus and denied its liability to pay any compensation.

6. The Tribunal, upon considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending truck. The Tribunal considered the annual income of the deceased at Rs.8,98,901/- and upon adding 15% towards future prospects, considered the income of the deceased at Rs.10,33,736/-. The Tribunal deducted 1/3rd towards personal expenses of the deceased and on applying multiplier of 11 computed loss of Dependency at Rs.75,80,738/-. The Tribunal also awarded compensation of Rs.25,000/-

towards funeral expenses, and in addition Rs.40,000/- towards loss of consortium and Rs.50,000/- towards loss of estate. The Tribunal thus awarded total compensation of Rs.76,55,738/- with interest at the rate of 9% per annum from the date of the petition till final realization. Being aggrieved by the quantum of compensation awarded by the Tribunal, the appellant -Insurance Company has filed this appeal under Section 166 of the Motor Vehicles Act.

7. Mr. Devendranath Joshi, learned Counsel for the appellant-Insurance Company submits that the Tribunal has grossly erred in attributing negligence to the driver of the offending truck. He submits that the evidence on record amply proves that there was collision between two vehicles and that the accident was caused solely due to the negligence of the bus driver. He further submits that the Tribunal has erred in considering the annual income of the deceased at Rs. 8.98.901/- as the salary slips relied upon by the Tribunal include allowances meant solely for the benefit of the deceased. He has relied upon the decision of the Apex Court in ***National Insurance Company Ltd. vs. Indira Srivastava & Ors. 2008 (2) SCC 763*** to contend that the benefits meant only for the employee cannot be said to be part of salary for computation of compensation. He submits that the compensation awarded by the Tribunal is exorbitant.

8. Per contra, Mr.Gatne, learned Counsel for the applicants submits that the evidence on record amply proves that the accident was caused due to rash and negligence driving by the driver of the offending truck. Even otherwise, in view of the dictum of the Apex Court in ***Khenyei vs. New India Assurance Company Ltd. 2015(9) SCC 273*** the claim cannot be rejected or reduced as the claimants are entitled to recover the entire amount from the owner/insurer of either of the vehicles. He further submits that the evidence of AW2 Mukesh Jeswani amply proves that vide letter dated 27.08.2008 (Exh. 28) the deceased was offered CTC package of Rs.8,98,901/- per annum w.e.f 1.4.2008 and that for the previous year the CTC package was Rs.8,00,000/- per anum. He submits that the evidence on record amply proves that as per the CTC package, the total income of the deceased from 01.04.2008 till the date of his death i.e. 10.10.2008 was Rs.8,78,040/-. He submits that even as per the judgment of the Apex Court in Indira Srivastava (supra) the amount payable as perks/ emoluments are to be considered in calculating the income as the same would go to the benefit of the family.

9. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

10. The evidence on record reveals that on 10.10.2008 the deceased was a passenger in Bus No. MH-43-H-7324. There was collision

between the said bus and the offending truck No. MH-04-BU-8152 near Cotton Green, at Masant Road, Sewree. It is not in dispute that the deceased expired as a result of the injuries sustained in the said accident. The questions for determination are whether the accident was caused solely due to rash and negligent driving by the driver of the offending truck and whether the compensation awarded by the Tribunal is just and reasonable.

11 . It has been persistently held in series of cases that the M.V.Act is a beneficial legislation which has been framed with the object of providing relief to the victims of the motor vehicular accident. The Apex Court has time and again emphasized that Courts and Tribunals, while deciding such matters, have to be sensitive and appreciate that turn of event on the spot or the hardship that the claimants usually face in tracing witnesses or collecting information when they have not witnessed the accident. It would be relevant to refer to the decision in ***Sunita & Ors. vs. Rajasthan State Transport Corporation & Ors. 2020 (13) SCC 486*** wherein the Apex Court has referred to be previous pronouncements and reiterated that " *It is thus well settled that in motor accident claim cases, once the foundational fact, namely the actual occurrence of the accident has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle*

and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicular accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubts which is followed in criminal cases."

12. Reverting to the facts of the case, the evidence on record reveals that the FIR was registered against the driver of the truck for driving the vehicle in a rash and negligent manner and thereby causing death of said Dilip and causing injuries to several other passengers. The police records particularly the scene of accident panchanama also prove that the bus was on the correct side of the road. The truck had dashed against the drivers side of the bus and proceeded further grazing the entire length of the bus. The aforesaid material indicates that the accident was caused while the driver of the offending truck was trying to overtake another vehicle without paying attention to the on coming traffic.

13. The evidence in the form of police investigation is sufficient to reach the conclusion that the driver of the offending vehicle was negligent. Though the appellant had set up a defence that the accident was a result of the rash and negligent driving by the driver of the bus, the appellant has not adduced any such evidence. In such circumstances,

the findings recorded by the Tribunal on the issue of negligence do not warrant interference.

14. Coming to the quantum of compensation, it need not be emphasized that Section 168 of the Motor Vehicle Act, 1988 casts a duty on the Tribunal and Courts to determine the compensation that appears to be 'just compensation' keeping in mind the well settled principles and the provisions of law. In the instant case, the evidence of the AW1 Daksha Dilip Modi, who is the widow of the deceased, reveals that the deceased was 55 years of age and was enjoying good health. The evidence of the AW1 Daxa, as well as AW2 Mukesh Jeswani proves that the deceased was B. Com. and LLB Graduate. He was employed with Reliance Industries since 1983, and was working as a Manager at the time of his death.

15. As regards the income of the deceased AW1 has deposed that as on the date of death, his net income was Rs.65,883/- per month. AW2 Mukesh Jeswani has placed on record copy of letter dated 30.05.2007, indicating that in the year 2007 the management had revised Cost to Company (CTC) to Rs.8,48,001/- which was to be apportioned in 40:60 ratio i.e. basic pay- 40% and choice pay 60%. He has deposed that in the year 2007, by letter dated 30.05.2007 (Exh.29), the deceased was given Rs.80,000/- in appreciation of his good performance. AW2

claims that as on the date of the death, the annual income of the deceased was Rs. 8,98,901/-. He has produced copy of letter dated 27.08.2008 (exh.28) whereunder the Management had revised Cost to Company (CTC) to Rs.8,98,901/- which was to be apportioned in 40:60 ratio i.e. basic pay- 40% and choice pay 60%. He has stated that the original letter was given to the employer. AW2 has also produced the salary slips of the deceased for the month of June to September, 2008.

16. The Tribunal has relied upon letter dated 27.08.2008 (Exh.28) and computed the compensation considering the annual income of the deceased at Rs.8,98,901/- per annum. It is pertinent to note that the claimants have not produced the original letter dated 27.08.2008. In fact, AW1 has not even referred to this letter and her evidence does not indicate that the deceased was drawing annual income of Rs.8,98,901/- . On the contrary, she has deposed that the net income of the deceased at the time of his death was Rs.65,883/- per month i.e. Rs.7,90,596/- per anum.

17. It may be mentioned here that the salary slips for the month of May to September, 2008, produced by the claimants, indicate that the basic salary of the deceased was Rs.24198/- for the month of May to July 2008 and Rs.25651/- for the month of August and September, 2008. The deceased was paid Rs.19,166/- as HRA and Rs.1500/- towards

uniform allowance. He was paid fuel and maintenance reimbursement which varied from month to month. The amount indicated in the salary slips does not tally with the amount mentioned in the letter at Exh.28 or the letter dt.30.05.2007. The claimants have also not produced bank records to prove that the deceased was paid salary which more than that reflected in the salary slips.

18. AW2 has placed on record Form 16 for the financial year 1st April 2006 to 31st March 2007 which reveals that the gross salary paid to the deceased during the said financial year was Rs.3,51,316/- and the tax deducted for the said financial year was Rs.33,425/-. AW2 has also produced Form 16 for the financial year 1st April 2007 to 31st March 2008 i.e. the financial year preceding his death, which reveals that the gross salary paid to the deceased for the said financial year was Rs.7,82,508/-, and the tax deducted for the said financial year was Rs.1,67,364/-. The income disclosed in the said Form 16 also does not tally with the income mentioned in the letters at Exh. 28 or the letter dated 30.05.2007.

19. As noted above, Form 16 for the financial year preceding the death of the deceased reveals that the gross salary paid to the deceased was Rs.7,82,508/-. Upon deducting tax of Rs.1,67,634/- , the net income of the deceased works out to Rs. 6,14,874/- per anum.

Considering the age of the deceased, and upon adding 15% towards future prospect, the income of the deceased works out to Rs.7,07,105/- per annum. The deceased was married with two children and upon deducting 1/3rd towards his personal expenses the income works out to Rs.4,71,404/-. Considering the age of the deceased and applying multiplier of 11, the loss of dependency works out to Rs.51,85,444/-. In addition the Claimants are entitled for compensation of Rs.30,000/- towards funeral expenses and loss of estate. The claimants are also entitled for compensation of Rs.1,32,000/- towards loss of spousal and parental consortium. Thus, the claimants are entitled for total compensation of Rs.53,47,444/-, which is rounded of to Rs.53,50,000/- as against the compensation of Rs.76,55,738/- awarded by the Tribunal. There is nothing on record to indicate that the prevailing rate of interest was lower than that granted by the Tribunal, hence no case is made out to reduce the rate of interest.

20. Under the circumstances, the appeal is allowed. The impugned judgment and award is modified to the extent that the claimants are held to be entitled for compensation of Rs.53,50,000/- with interest @ 9% per annum from the date of the institution till actual realisation.

. The claimant No.1 being the widow be paid 50% of the compensation and claimants nos.2 and 3 be paid 50 % of the compensation in equal proportion with proportionate interest accured thereon. The balance amount with proportionate interest be refunded to the Appellant -Insurance Company.

. Interim Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)