IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 616 OF 2023

Smt. Peu Rohan @ Rantu Nandi …. Appellant
v/s.
Mr. Prakash Dhirendra Nandi and ors. …. Respondents

Ms. Rina Kundu for the Appellant.
Ms. Poonam Mittal for the Respondent – Insurance Company.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th AUGUST, 2023.

P. C. :-

. With consent, heard finally at the stage of admission.

2. This is an Appeal under section 173 of Motor Vehicles Act directed against the judgment and award dated 25/01/2020 passed by the Member, Motor Accident Claim Tribunal, Vasai in Motor Accident Claim Petition No.58/201. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.14,14,000/- to the Claimants with interest @ 7.5% p.a. from the date of filing of the application till realization of the amount.

3. The Appellant who shall be hereinafter referred to as 'the Claimant' had filed the claim petition under section 166 of Motor

Vehicles Act in view of death of her husband Rohan @ Rantu Nandi on 09/12/2014 involving a motor tanker bearing No.MCU-3660 insured by the Respondent No.4 – Insurance Company. The case of the Claimant is that on 09/12/2014, while the deceased was returning home at Shastri Nagar, Vasai on his motor cycle bearing No.M-18-Q-1422, a tanker bearing No.MCU-3660 came from behind and dashed against his motor cycle and proceeded further with the deceased trapped in the rear wheel of the tanker. The people gathered at the spot stopped the tanker and shifted the injured to the hospital. The deceased had sustained severe injuries and his right leg was amputed from the hip joint. He succumbed to the injuries on 28/03/2015.

4. It is the case of the Claimant that the accident was caused solely due to the negligence of the driver of the offending vehicle, which was owned by Respondent No.3 and insured by Respondent No.4-Insurance Company. The Claimant stated that the deceased was 28 years of age and was earning Rs.10,000/- per month. The Claimant further stated that she had spent Rs.10,00,000/- towards medical expenses while the deceased was admitted in the hospital. The Claimant therefore prayed for just and reasonable compensation.

5. The Respondent – Insurance Company denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Respondent claimed that the deceased lost control of the motor cycle and came under the rear wheel of the tanker. The Respondent – Insurance Company also disputed the age and income of the deceased and contended that the Claimant is not entitled for compensation as prayed.

6. The Tribunal, upon considering the evidence on record, held that it was the case of contributory negligence and attributed negligence to the deceased to the extent of 30% to the deceased. Upon considering the age and income of the deceased, the Tribunal computed loss of dependency at Rs.11,42,400/- and upon deducting 30% towards contributory negligence and further adding compensation on other conventional heads, awarded total compensation of Rs.14,14,000/-.

7. Ms. Rina Kundu, learned counsel for the Appellant-Claimant has restricted her challenge to the findings recorded on the issue of negligence and deduction of 30% towards contributory negligence on the part of the deceased. She submits that there is no evidence to prove that the deceased was responsible for the accident in any

manner. In such circumstances, the Tribunal has erred in deducting 30% towards contributory negligence.

8. Per contra, learned counsel for the Respondent – Insurance Company submits that the panchanama indicates that the spot of the accident was in the middle of the road, which fact proves that the rider of the motor cycle was equally responsible for the accident.

9. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties. The only question for consideration is whether the deceased, who was the rider of the motor cycle, had also contributed to the accident.

10. It is well-settled that in the petitions under section 166 of the Motor Vehicles Act, the Claimants are required to prove their case on the touchstone of preponderance of probability. In the instant case, it is not in dispute that FIR was lodged against the driver of the offending vehicle for driving the vehicle in a rash and negligent manner. Having raised the plea of contributory negligence, burden was on the Respondent to prove the said plea. The Respondent – Insurance Company has not examined the driver of the vehicle who would have

been the best person to explain the manner in which the accident had occurred. The panchanama, which only records the observation of the pancha witnesses on the spot, cannot be a substitute for such evidence. Hence, the Tribunal has erred in relying upon the panchanama in attributing negligence to the deceased. Furthermore, the evidence on record reveals that the deceased had come under the rear wheel of the tanker and that the tanker proceeded further without even stopping at the place of the accident. All these facts indicate that the driver of the offending vehicle was solely responsible for the accident. Hence, the Tribunal was not justified in deducting 30% towards contributory negligence. Hence, the award to that extent needs to be modified.

11. The Tribunal has considered the income of the deceased at Rs.72,000/- per annum and upon adding 40% towards future prospects, deducting 1/3rd towards personal expenses and applying multiplier of 17, loss of dependency works out to Rs.11,42,400/-. In addition, the Appellant is entitled for medical expenses of Rs.4,94,262/-, Rs.44,000/- towards loss of spousal consortium and Rs.33,000/- towards loss of estate and funeral expenses. Hence, the Claimant is entitled for total compensation of Rs.17,13,662/-.

12. Under the circumstances, the Appeal is allowed. The impugned judgment is set-aside. It is held that the Claimant is entitled for compensation of Rs.17,13,662/- with interest @ 7.5% p.a. from the date of filing of the application till final realization of the amount. The Insurance Company to deposit the amount before the Claims Tribunal, Vasai within a period of four weeks.

(SMT. ANUJA PRABHUDESSAI, J.)