IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 577 OF 2023

United India Insurance Company Limited .Appellant

Vs.

Smt. Jayshree Rahul Nagane & ors. .Respondents

WITH
INTERIM APPLICATION NO. 2522 OF 2023
IN
FIRST APPEAL NO. 577 OF 2023

Smt. Jayshree Rahul Nagane & ors. .Applicants

IN THE MATTER OF

United India Insurance Company Limited .Appellant

Vs.

Smt. Jayshree Rahul Nagane & ors. .Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate, for the Appellant
Mr. Ajay A. Joshi, Advocate, for the Respondents

CORAM : ANUJA PRABHUDESSAI, J.

DATE : 30.08.2023

P. C.

. This is an Appeal filed under Section 173 of the Motor Vehicles Act challenging Judgment and Award dated 17.03.2022 passed by the Member, Claims Tribunal, Pandharpur, District – Solapur in M.A.C.T.No. 19 of 2016. By the impugned Judgment and Award, the Claims Tribunal awarded compensation of

Rs. 35,04,000/- with interest at the rate of 6% per annum from the date of the Petition till final realization.

2. Respondent Nos. 1 to 5 (hereinafter referred to as 'Original Claimants') filed a Petition under Section 166 of the Motor Vehicles Act, 1988 in view of death of Rahul Dattatraya Nagane on 08.02.2016 in a motor vehicle accident between Bolero Jeep bearing registration No. MH-13/AC-6062 and Milk Van bearing registration No. MH-11/AL-4127. The claimants alleged that the accident was caused solely due to rash and negligent driving by the driver of the Milk Van. The deceased was 26 years of age. He was an agriculturist and was also doing other labour work and earning income of Rs. 95,000/- per annum. The claimants, being the widow, two children of tender years and parents were solely dependent on the income of the deceased. The claimants, therefore, claimed compensation of Rs. 75,00,000/- from the Appellant herein, being insurer as well as the driver and the owner of the offending vehicle.

3. Respondent No. 6, the original owner of the Milk Van claimed that the said vehicle which was hypothecated with the A. V. Finance Limited was seized by the Finance Company on 31.12.2015 for default in payment of instalments and was sold to

Respondent No. 7 herein. He, therefore, denied his liability to pay compensation.

4. Respondent No. 6, the purchaser of the offending vehicle denied that the accident was caused due to rash and negligent driving by the driver of the offending vehicle and attributed negligence to the driver of the Bolero Jeep.

5. The defence of the Appellant – Insurance Company was that the driver of the offending vehicle was not holding a valid and effective driving license and hence, it is not liable to indemnify the insured for breach of terms and conditions of the Policy. The Appellant – Insurance Company also raised a plea of non-joinder of necessary party viz the insurer of the Bolero Jeep. It was further contended that the driver of the Milk Van was falsely implicated though the accident was caused due to rash and negligent driving by the driver of the Bolero Jeep.

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 Milk Van, bearing registration No. MH-11/AL-4127. The Tribunal considered annual agricultural income of the deceased at Rs. 50,000/- per annum and further

held that the deceased, being a labourer would have earned Rs. 10,000/- per month towards labour charges. The Tribunal deducted 3/4th towards personal expenses and applying multiplier of 17, the loss of dependency has been computed at Rs. 28,17,750/- considering future prospectus, the Tribunal awarded total compensation of Rs. 35,04,000/-. Being aggrieved by the impugned Judgment and Award, the Appellant has filed this Appeal.

7. Mr. Mehta, learned counsel for the Appellant disputes involvement of the vehicle, being registration No. MH-11/AL-4127 in the accident. He submits that the FIR mentions the registration number of the vehicle as MH-11/AF-4127. He further submits that though the vehicle was insured by Respondent No. 6, the said vehicle was subsequently sold to Respondent No. 7. There is no privity of contract of the Insurance Company with Respondent No. 7. Hence, the Insurance Company is not liable to pay compensation to the claimants. Mr. Mehta, Advocate further submits that claim of the compensation awarded by the Tribunal is not just and reasonable.

8. Per contra, learned counsel for the Respondents

submits that Respondent No. 7 has admitted involvement of the offending vehicle in the accident. He further submits that there is an error in recording registration number of the vehicle in the FIR. He submits that the vehicle involved in the accident was a Milk Van whereas registration No. MH-11/AF-4127 shows that the said vehicle is a two wheeler. He submits that the driver of the offending vehicle has been held guilty of the offence and as such, the Appellant – Insurance Company cannot be heard to say that the said vehicle was not involved in the accident. Learned counsel for the Respondents further submits that the vehicle which was duly insured at the time the vehicle had met with an accident and as such, the Appellant – Insurance Company cannot be absolved of its liability of satisfying the third party claim. Learned counsel for the Respondents further submits that the compensation awarded by the Tribunal is just and reasonable and does not warrant interference.

9. I have perused the record and considered the submissions advanced by learned counsel for the respective parties.

10. The questions which fall for consideration are :-

(i) Whether the offending vehicle bearing registration No. MH-11/AL-4127 was involved in the accident ?

(ii) Whether the accident was caused due to rash and negligent driving by the driver of the offending vehicle ?

(iii) Whether the compensation awarded by the Tribunal is just and reasonable ?

(iv) Whether the Appellant – Insurance Company is liable to pay compensation ?

11. The evidence on record reveals that on the relevant date, the deceased – Rahul Nagane was travelling by Bolero Jeep bearing registration No. MH-13/AC-6062 from Solapur to Pandharpur. There was a collusion between the said Jeep and a Milk Van which resulted death of said Rahul Nagane. It is true that the FIR mentions registration number of the offending vehicle as MH-11/AF-4127. It is, however, to be noted that the vehicle bearing registration No. MH-11/AF-4127 is in fact a two wheeler and hence, it is evident that the number of the vehicle as mentioned in the FIR is wrong. Be that as it may, it is on record that the vehicle bearing registration No. MH-11/AL-4127 is a Milk Van which was initially owned by Respondent No. 6 and subsequently, sold to Respondent No. 7. Furthermore, Respondent No. 7 has not disputed involvement of the said vehicle in the accident. The driver of the said vehicle was charged for driving the vehicle in a rash and negligent manner and causing death of Rahul Nagane due to rash and negligent act. Learned 4th Judicial Magistrate, First Class, Pandharpur vide

Judgment dated 29.07.2021 in S.C.C.No. 419 of 2016 (old)/ S.C.C.No. 483 of 2021 has held the driver of the said vehicle guilty for rash and negligent driving and thereby causing death of Rahul Nagane. The oral evidence viz a viz the defence taken by Respondent No. 7 and the Judgment of the learned Magistrate clearly establishes that the offending vehicle bearing registration No. MH-11/AL-4127 was involved in the accident and that the accident was caused due to rash and negligent driving by the driver of the said vehicle.

12. The evidence on record reveals that the deceased was 26 years of age. He was an agriculturist and deriving agricultural income of Rs. 50,000/- per month. He was also doing other labour work. The Tribunal has considered the income of the deceased as Rs. 10,000/- per month which is not exorbitant. Thus, the annual income of the deceased was Rs. 1,70,000/-. Considering the age of the deceased and nature of the employment, an amount of Rs. 51,000/-, being 30% of the actual income needs to be added towards future prospect. Furthermore, considering the number of dependents, Rs. 52,250/- i. e. 3/4th of the income, needs to be deducted towards personal expenses of the deceased. The actual income of the deceased works at Rs. 1,65,750/- and upon applying multiplier of 17, the loss of dependency is computed at

Rs. 28,17,750/-. The Claimant No. 1, the widow, Claimant Nos. 2 & 3, the minor children & Claimant Nos. 4 & 5, the parents of the deceased are entitled for compensation of Rs. 44,000/- each towards loss of spousal, parental and filial compensation. In addition, Claimants are entitled for compensation of Rs. 16,500/- towards funeral expenses and Rs. 16,500/- towards loss of consortium. The Claimants are, thus, entitled for a total compensation of Rs. 30,69,500/- which is rounded up to Rs. 30,70,000/- as against Rs. 35,04,000/- awarded by the Claims Tribunal.

13. It is not in dispute that the vehicle was insured by the Appellant – Insurance Company and that there was a valid insurance on the date of the accident. Hence, Appellant – Insurance Company cannot be absolved of its liability of paying compensation to the third party.

14. Hence, the following order.

O R D E R

(i) The Appeal is partly allowed;

(ii) The impugned Judgment and Award dated 17.03.2022 passed by the Member, Claims Tribunal, Pandharpur, District – Solapur in M.A.C.T.No. 19 of 2016 is modified to the extent that the Claimants are entitled for a total compensation of Rs. 30,70,000/- with accrued interest at the rate of 6% from the date of the Petition till the date of final realization;

(iii) The Appellant – Insurance Company has already dispensed money with interest;

(iv) Claimant Nos. 2 & 3, being minor children are entitled for compensation of Rs. 10,000/- each with proportionate interest be invested in the name of two minor children for a period of six years or till the date they attain majority whichever is earlier;

(v) Claimant No. 1, being a widow is entitled for compensation of Rs. 5,30,000/- with proportionate interest accrued thereon;

(vi) Claimant Nos. 4 & 5, being parents are entitled for compensation of Rs. 5,40,000/- each with proportionate interest accrued thereon;

(vii) The balance amount with proportionate interest accrued thereon be refunded to the Appellant – Insurance Company;

(viii) Statutory deposit be transferred to the Claims Tribunal, Pandharpur, District – Solapur.

15. The Appeal stands disposed of.

16. In view of disposal of the Appeal, the I. A. No. 2522 of 2023 does not survive and same stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)