2024:BHC-AUG:11922

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2531 OF 2013

ARVIND S/O EKNATH CHAVAN AND ANOTHER
VERSUS
RAMCHANDRA S/O HARIBHAU DARE AND OTHERS

Mr. R. D. Bhalerao, Advocate for the Appellants
Mr. V. B. Munot, Advocate for respondent No.1
Mr. S. V. Kulkarni, Advocate for respondent No.3.

CORAM : R. M. JOSHI, J.
DATE : 20th JUNE, 2024

PER COURT :-

1. This appeal filed under Section 173 of Motor Vehicle Act (for short 'MV Act') takes exception to the judgment and award dated 03/05/2012 passed in MACP No. 251/2009.

2. Parties are referred to as claimants, owners, driver and insurer for the sake of convenience.

3. Claimants are parents of deceased Aakash aged about 20 years who died in motor vehicular accident on 19/07/2019. It is the case of the claimants that on the faithful day Aakash was proceeded along with his friend on motorcycle bearing No. MH-17-Y-1287. It is alleged that the tipper bearing registration No. MH-16-B-484 owned by

respondent No.1 and driven by respondent No.2 was proceeding in excessive speed. Since the said vehicle was stopped suddenly in the middle of road, the motorcycle driven by the Aakash rammed into the said vehicle. In the said accident Aakash as well as pillion rider suffered serious injuries. They were admitted in the Pravara Medical Trust's Hospital, Loni. Unfortunately Aakash succumbed to the injuries caused in the said accident. Crime came to be registered vide No. I-195/2009 with Rahuri Police Station against the driver of the tipper.

4. Owner of tipper filed written statement at Exhibit 25 denying the averments of the claimants. It is alleged that the deceased was riding motorcycle in rash and negligent manner. It is claimed that the tipper is duly insured with insurer with respondent No.3. Driver of the tipper though was served with the notice, remained absent and hence claim proceeded ex-parte against him. Insurer filed written statement at Exhibit 18 denying the averments of the claimants in respect of the manner in which accident occurred so also age, occupation and income of the deceased and dependency of claimants. It is specifically averred that the insurer is not liable to make payment of compensation for the reason that there is breach of terms of policy by the insurer.

5. Issues were framed by the Tribunal. Complainant lead

evidence of claimant No.1 and relied upon documentary evidence such as first information report Exh. 34, spot panchnama Exh. 42, inquest panchnama Exh. 36 and pm report Exh. 37. Owner and insurer of the vehicle did not lead any evidence before the Tribunal.

6. From the contention of rival parties the issues fell for the consideration of the Tribunal were whether the claimants are entitled for the compensation on account of death of their son Aakash and that the accident in question occurred due to the negligence on the part of the driver of the tipper. On the basis of written statement of insurer, burden was on insurer to prove breach of terms of policy by owner.

7. Perusal of the evidence of claimant No.1 Arvind Exhibit 30 indicates that he is the father of the deceased. Though he did not personally witness the accident, he proved the manner in which the accident occurred on the basis of police papers. There is no dispute made by the owner and insurer with regard to the genuineness of the police papers. During the cross-examination nothing is elicited except for the admission of the witness that there is no evidence to show income of the deceased, the evidence lead by him to discard his testimony. On the other hand neither owner nor insurer led evidence to prove their respective contentions.

8. Thus, on the basis of evidence on record it is proved by claimants that the deceased was aged about 20 years (inquest panchnama Exhibit 36 and PM report Exhibit 37). Since there is no evidence with regard to the actual income of the deceased the Tribunal was required to take into consideration notional income which was accepted at Rs.3000/- at the relevant time. Having regard to the nature of claim of the claimants, this Court finds no error committed by the Tribunal in accepting notional income of the deceased at Rs.3000/-.

9. Learned counsel for the insurer submits that the Tribunal has committed error in deducting 1/3rd amount towards the personal expenses of the deceased by ignoring the fact that the deceased was unmarried. According to him, ½ of notional income was required to be deducted towards his personal expenses and on this count the order passed by the Tribunal deserves modification. Insurer, however, has neither challenged the impugned award independently by filing appeal nor has filed cross objection in the appeal to take exception to these findings. Thus, it is not open for the insurer to seek modification in award as claimed by the insurer.

10. The learned Tribunal has granted an amount of Rs.5000/- loss of estate and Rs.3000/- towards funeral expenses on other heads.

This part of the award is not sustainable in view of the judgment of Hon'ble Supreme Court in case ***National Insurance Company Limited Versus Pranay Sethi and Others, (2017) 16 SCC 680***. Hence, the order.

ORDER

(i) Appeal stands partly allowed, in following terms.

(ii) The impugned judgment and award stands modified as under:

Sr. No.	Heads	Rs.
1.	Rs.24000/- x 16 multiplier =	3,60,000/-
2.	Loss of estate	15,000/-
3.	Funeral Expenses	15,000/-
4.	Loss of consortium Rs.40,000/- each claimants	80,000/-
	Total compensation	**4,70,000/-**

(iii) Rest of the judgment and award to remain unchanged.

(iv) Claimants to pay Court fees on enhanced compensation as per rules.

(v) The difference of compensation be deposited within a period of six weeks.

(vi) Amount deposited (along with accrued interest) by respondents is permitted to be withdrawn by claimants.

(vii) No order as to costs.

(R. M. JOSHI, J.)

ssp