2024:BHC-AUG:17288

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3066 OF 2019

United India Insurance Company Ltd.
Through its Division Office,
Divisional Manager,
Osmanpura, Aurangabad. ...Appellant
(Ori. Res. No.2)

Versus

1. Premala @ Premila W/o Balaji Rakte
Age: 30 years Occ: Household,
R/o. Jauwadi, Tq. Ausa
Dist. Latur

2. Pranjal D/o Balaji Rakte
Age: 12 years Occ: Education/Minor,
R/o. Jauwadi, Tq. Ausa
Dist. Latur

3. Vishnu S/o Balaji Rakte
Age: 10 years Occ: Education/Minor,
R/o. Jauwadi, Tq. Ausa
Dist. Latur

4. Dhundabai w/o Ashokrao Rakte
Age: 55 years Occ: Household,
R/o. Jauwadi, Tq. Ausa
Dist. Latur

5. Udhaybhan s/o Devidas Birajdar
Age: 50 years Occ: Agri & Business,
R/o. Chinchkot Tq. Omarga
Dist. Osmanabad ...Respondents
(Res.1 to 4 are the orig
claim and res. No.5 orig.res)

...

Mr. Sudhir V. Kulkarni, Advocate for Appellant
Mr. Manoj D. Shinde, Advocate for Respondent Nos.1 to 4

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th AUGUST, 2024

ORAL JUDGMENT :

1. By this appeal filed under Section 173 of the Motor Vehicles Act, appellant Insurance Company challenges judgment and award dated 10/01/2019, passed by Motor Accident Claims Tribunal, Latur, in M.A.C.P. No.76/2015.

2. Respondent Nos.1 to 4 / claimants filed claim petition on account of death of Balaji Ashok Rakte, who, at the time of accident was serving as driver at Saudi Arabia and was getting salary of Riyals 1800/- per month, which is equivalent to Indian Rupees 30,062/-. He had come to India on leave of 90 days. His departure from India to Riyadh, Saudi Arabia, was scheduled on 20/03/2015. On 27/02/2015 deceased Balaji Rakte and Balaji Bansode were proceeding from Khasgiwadi Omerga to village Jauwadi on motorcycle bearing No.MH-12-DR-0166. Deceased Balaji Rakte was riding the motorcycle and Balaji Bansode was pillion rider. Near Kawatha pati, at about 7:00 p.m. one tempo bearing No. MH-24-F-6309 came from opposite direction i.e. from Killari side in high speed and went out of control and gave forceful dash to the motorcycle of deceased. In the accident rider and pillion rider along with motorcycle came under the front wheel of tempo. Pillion rider Balaji Bansode expired on the spot. Balaji Rakte sustained grievous injuries, he was shifted to Civil Hospital, Latur, from there he was referred to Government Hospital, Solapur, for further treatment. During treatment he succumbed to the injuries on 04/03/2015. Offence was registered against the driver of tempo. Claimants,

therefore, filed claim petition claiming compensation of Rs.78,05,000/-, against the owner-cum-driver of tempo and Insurance Company, under Section 166 of the Motor Vehicles Act. Tribunal has partly allowed the claim and awarded compensation of Rs.17,67,000/- along with interest @ 9% per annum. Insurance Company is aggrieved by the quantum of compensation.

3. Heard learned advocate for appellant and learned advocate for respondent Nos.1 to 4 / claimants.

4. Learned advocate for appellant Insurance Company strenuously urged that there is nothing on record to show that deceased was working at Saudi Arabia as driver and hence, the Tribunal ought to have assessed his notional income at Rs.6,000/- per month, in terms of ratio in ***National Insurance Co. Ltd. Vs. Pranay Sethi and Others, [2017 (16) SCC 680]***. He submits that Tribunal has erred in holding notional income of the deceased at Rs.8,000/- per month.

5. Learned advocate for respondent Nos.1 to 4 / claimants, on the other hand, supported the impugned judgment and award. By placing reliance on the notification dated 31/05/2010 issued by the Ministry of Labour and Employment, he submits that Central Government has decided the amount of monthly wages of unskilled worker at Rs.8,000/- per month. In this view of the matter, Tribunal is justified in assessing the notional income of deceased at Rs.8,000/- per month.

6. Heard learned advocate for appellant and learned advocate for respondent Nos.1 to 4 at length. Perused the record.

7. In support of the contention that deceased was possessing driving license, copy of his driving license is placed on record which shows that deceased was permitted to drive tractor and transport vehicles. In support of the contention that deceased was serving as driver at Riyadh, capital of Saudi Arabia, claimants have placed on record copies of entries in the passport of deceased at Exhibit-35 and confirmed air ticket of deceased, which show that deceased had travelled from Riyadh to Mumbai on 22/12/2014. Copy of Residence Permit issued to the deceased by Ministry of Interior of Kingdom of Saudi Arabia and copy of transfer of 800 Saudi Riyal (12,145.11/- Indian Rupees) on 04/08/2014, are also placed on record. These documents support the case of claimants that deceased was serving as driver at Riyadh in Saudi Arabia. It is well settled that claimants have to prove their case on the touchstone of preponderance of probabilities and discharge their initial burden. Except giving suggestion that deceased was not working at Riyadh, nothing is brought on record by the Insurance Company to disprove the said contention.

Since deceased was working as driver, he has to be treated as skilled worker. By the notification issued by Ministry of Labour and Employment, under Section 4(1B) of the Employee’s Compensation Act, 1923, published in the Gazette of India on

31/05/2010, minimum monthly wages of workman are specified at Rs.8,000/-. In spite of this, Tribunal has assessed income of deceased at Rs.8,000/- per month, which is not liable to be interfered with in the facts of the present case.

8. Tribunal has deducted $1/4^{th}$ amount towards personal expenses of deceased and has rightly calculated loss of dependency to the tune of Rs.72,000/-. Tribunal has added 35% future prospects, which in fact should have been 40% in terms of ratio in ***Pranay Sethi*** (supra), as the age of deceased was 28 years at the time of accident. Tribunal has also awarded meager compensation of Rs.15,000/- each to claimants towards loss of love and affection and Rs.40,000/- towards loss of consortium to wife of the deceased, which in the facts of the present case appears to be grossly inadequate.

9. Thus, the Tribunal in fact has awarded less compensation to the claimants. Hence, there is no merit in the challenge raised by Insurance Company to the quantum of compensation. First appeal being devoid of merit is dismissed. The amount deposited by appellant Insurance Company in this Court be paid to the claimants along with accrued interest.

(NITIN B. SURYAWANSHI, J.)