2024:BHC-AUG:14888

IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1572 OF 2012

1. Smt. Kokilabai Yuvraj Pardhi (Chavan),
   Age 45 years, Occ. Household,

2. Shri. Suresh Yuvraj Pardhi (Chavan),
   Age 23 years, Occ. Nil,

3. Sau. Rekha Gopal Pardhi (Chavan),
   Age 28 years, Occ. Education,

   R/o C/o Shri. Gopal Natthu Pawar,
   Old Pardhi Wada, Adawad, Tal.Chopada,
   Dist. Jalgaon.

4. Sau Sarika Dhanraj Pardhi (Salunkhe),
   Age 25 years, Occ. Household,
   R/o C/o Shri. Dhanraj Supdu Salunkhe,
   Khadki Borgaon, Tal. Jamner
   Dist. Jalgaon.

5. Sau. Pravina Sunil Pardhi (Mukhati),
   Age 22 years, Occ. Household,
   R/o C/o Shri. Sunil Ranchod Mukhati,
   Ranipura, Badwani, Dist. Badwani (MP).

...Appellants

VERSUS

1. Shri. Pravin Shivraj Jain,
   Age 45 years, Occ. Owner of vehicle,
   R/o 199 Baliram Peth, Jalgaon.

2. The Oriental Insurance Company Ltd.,
   The Divisional Office, Near Shashri
   Tower, 2nd Floor, Central Phule Market,
   Jalgaon.

...Respondents

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Advocate for the Appellants : Mr. M. M. Bhokarikar
Advocate for Respondent No.2 : Mr. R. F. Totala

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CORAM : R. M. JOSHI, J.
Dated : July 04, 2024

JUDGMENT :-

1. This appeal is filed under Section 173 of the Motor Vehicles Act taking exception against the impugned Judgment dated 31/07/2012, passed by Member of Motor Accident Claims Tribunal, Amalner in Motor Accident Claim Petition No.62/2010.

2. Parties are referred as claimant, owner, driver and insurer for the sake of brevity.

This petition has been filed by the original claimants for enhancement of the compensation. As per the case of the claimants on 15/03/2010 at about 07.30 p.m. deceased Yuvraj Soma Pardhi (Chavan) was said to be travelling in auto rickshaw bearing No.MH-19/ C-5416 from Bhalgaon to Amalner. When the rickshaw came at Mhasave Shivar on Erandole Parola road, a tanker bearing registration No.MH-19 / J-329 came from opposite direction in high speed and dashed against rickshaw. As a result of the said accident, Yuvraj died. Claimants are wife and children of deceased Yuvraj. The age of deceased was said to be 50 years and it is claimed that he was doing business of running a tea stall and was earning Rs.10,000/- per month out of the said business. Owner of offending tanker filed written statement at Exhibit 20 denying the contentions of the claimants that the accident took place due to the rash and negligent driving of the driver of tanker. It is alleged that deceased Yuvraj himself was driving auto rickshaw without any driving licence. It is claimed that in absence of any valid driving licence on the date of the accident, he is to be held responsible for the occurrence thereof. It is claimed that the tanker was duly insured with the insurer for the relevant period.

3. Insurer filed written statement at Exhibit 19 opposing the claim. Age, income, occupation of the deceased and liability to pay compensation is denied. It is the case of insurer that driver of auto rickshaw was close relative of Yuvraj. It is further claim of insurer that deceased Yuvraj sought permission of Kisan Bhika Chavan to drive auto rickshaw, and accordingly, he was driving the same at the time of accident. It is thus claim of insurer that insurer is not liable to payment any compensation.

4. Issues were framed by the Tribunal. Claimant No.1 filed affidavit at Exhibit 22 and relied upon the police papers i.e. First Information Report, spot panchanama, inquest panchanama, post mortem report,

driving licence of the driver of tanker, certificate of registration thereof (Exhibit 23 to 30). Claimant No.1 Kokilabai Yuvraj Pardhi (Chavan) was not eye-witness to the accident and she deposed with regard to the accident on the basis of police papers filed on record. Neither owner nor insurer has disputed genuineness of the said police papers. It is tried that for the purpose of determining the compensation in a proceeding which is summary in nature, it is permissible for the parties to rely upon the police papers and Tribunal can decide the issues involved with regard to the occurrence of the accident on the basis of such evidence. From documents placed on record, more particularly from candid admission of claimant No.1 in cross-examination it is proved that at the time of occurrence of the accident, deceased Yuvraj was driving the auto rickshaw. In the said accident he sustained serious injuries and died on the same day. Thus, the claimants have proved that the deceased has died involving motor vehicle.

5. As far as negligence of the drivers of either of the vehicle is concerned, there is no independent evidence led by the claimants as well as owner and insurer. On the basis of police papers it is sought to be contended by the claimants that the accident in question has occurred solely on account of the negligence of the driver of tanker. As

recorded above, genuineness of police papers is not in dispute. Spot panchanama filed at Exhibit 24 shows that the accident has occurred in the middle of the road which was having width of 24 feet with 3 feet Kaccha road to both sides and blood stains were found at the center of the road. It is thus clear from the said panchanama that there was head-on collision between the auto rickshaw and tanker. Having regard to the fact that the tanker is of width more than auto rickshaw, it is obvious that some part of extreme right side of the tanker would be close to the middle of the road. However, having regard to the width of auto rickshaw, if the same was driven to the extreme right that is from the middle of the road, certainly the driver of the rickshaw needs to be held responsible for the occurrence of the accident equally. Since the accident has occurred in middle of the road and there is head-on collision, needs to be held that driver of both vehicles are equally responsible for causing of said the accident.

6. It is sought to be argued on behalf of the Counsel for the claimants that in absence of any evidence being led by the owner or insurer to prove the said negligence of the deceased, it was not open for the Tribunal to hold deceased equally responsible for the occurrence of the accident. In this regard it is pertinent to note that the claimants

have relied upon police papers which include spot panchanama Exhibit 24. It cannot be permitted to the claimants to rely upon part of the police papers and deny the remaining part thereof. Once there is sufficient evidence on record to indicate that the accident has occurred due to the fault of both drivers, no further evidence was required to be led by owner or insurer to substantiate said fact. On the basis of the evidence on record, learned Tribunal has rightly held both drivers being equally responsible for the occurrence of the accident. This Court, therefore, finds no reason or justification to interfere into the findings to the effect that the deceased is therefore held to be contributory negligent in the occurrence of the accident to the extent of 50 %.

7. From post mortem notes it is clear that the age of the deceased 50 years at the time of occurrence of the accident. Claimants have contended that deceased was earning Rs.10,000/- per month by running a tea stall. Perusal of record however shows that there is absolutely no evidence led by claimants to prove that he was earning Rs.10,000/- per month. Claimant No.1 in her cross-examination has accepted that the deceased was doing work of stone breading. Meaning thereby the work done by the deceased cannot be anything more than labour work. In absence of any evidence being led by the claimants to

prove income of the deceased, it was open for the Tribunal to consider the notional income of the deceased for the purpose of computation of his income. In the instant case, learned Tribunal has held the said notional income at Rs.3000/- per month. This Court however finds such notional income being not in consonance with the minimum wage payable to the Class-4 employee at the relevant time. In and around year 2010, minimum wages for labourer doing the work of breading stone etc. was Rs.4000/- per month. In view of Judgment of Hon'ble Supreme Court in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others,*** **reported in** ***2017 SCC Online SC 1270: 2017 ACJ 2700,*** further prospects to initial income. Hence by following Judge in case of ***Pranay Sethi*** (Supra) and considering age of deceased income for purpose of calculation of compensation is considered at Rs.5333/- (i.e. Rs.4000/- + 25% future prospects Rs.1333/-). As age of the deceased was 50 years, following Judgment in case of **Sarla Verma and Ors. vs. Delhi Transport Corp. and Anr., reported in AIR 2009 SC 3104,** multiplier applicable would be 11. From the total compensation 1/3rd amount would be deducted towards personal expenses of deceased owing to members of dependent on him. The Tribunal therefore has committed error in not considering the minimum wage applicable to the said category of the workman. The notional income of the deceased therefore is held at Rs.4000/- per month and the amount of compensation is calculated thereon. Considering the dependency on the deceased 1/3rd amount deserves to be deducted towards his personal expenses. Having regard to the said fact, 5333/- x 12 = 63,996/-. (63,996/- x 11= 7,03,956). Out of it, deduction towards the personal expenditure of deceased to be taken 1/3rd. Amount of compensation, loss of income is determined at Rs.4,69,304/- (Rs.7,03,956/- minus 1/3rd i.e. Rs.2,34,654/-)

8. The learned Tribunal has granted consortium of Rs.5000/- payable to widow i.e. claimant No.1 and for funeral expenses of Rs.5000/-, for loss of estate Rs.2000/-, and Rs.10000/- towards love and affection. Learned Counsel for claimants submits that the said compensation on these head is not sustainable in view of Judgment of the Constitution Bench in case of ***National Insurance Company Ltd. vs. Pranay Sethi and others*** (Supra). As per Judgment in case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram (2018) 18 SCC 130,*** widow and all children of deceased would be entitled to receive each Rs.40,000/- towards consortium and funeral expenses

heads in accordance with the law laid down by the Hon'ble Supreme court therein. Accordingly, wife and children to be paid Rs.40,000/- each as consortium. In addition hereto they would be entitled to receive Rs.15,000/- towards funeral expenses. Thus, total compensation payable tot he applicants is Rs.6,84,304/- (Rs.4,69,304/- + Rs.2,00,000/- + Rs.15,000/-). As the deceased himself had contributed to the accident equally, a deduction of 50% will have to be made, and hence, the compensation payable will be Rs.3,42,152/- (6,84,304/- minus 50% = Rs.3,42,152/-).

9. Learned Counsel for insurer amongst other submission has raised objection to grant of interest @ 9% per annum as granted by the Tribunal. He further submits that even in respect of the enhanced compensation, interest cannot be granted. In this regard it is pertinent to note that as per provisions of Section 163 of the Act, it is a discretion of the Tribunal to award interest on the amount of compensation. As far as interest granted @ 9 % per annum is concerned, there is no material to indicate that interest so granted is excessive. As far as the enhancement of compensation is concerned, once it is held that the claimants were entitled to receive

such compensation and hence enhancement is granted, they are entitled to receive interest thereon from the date of application. Having regard to these facts, the contention of insurer with regard to interest does not deserve acceptance.

10. In view of the above discussion, the impugned order passed in MACP No.62/2010 is allowed in following terms : -

(A) Opponent Nos.1 and 2 shall jointly and severally pay compensation of Rs.3,42,152/- along with the interest @ of 9% per annum from the date of application till realization of the amount.

(B) Rest of the order passed by the Tribunal to remain unchanged.

(R. M. JOSHI, J.)

vj gawade/-.