2024:BHC-AUG:20082

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1 OF 2017

The United India Insurance Company Limited
Through Administrative Officer,
Mr. Mahendra Pratapsingh Virat,
Age: 47 years, Occupation: Service,
C/o. Divisional Office No. 1,
Osmanpura, Aurangabad. ...APPELLANT
[Orig. Resp. No. 2]

VERSUS

1. Sumanbai W/o. Samindar Chavhan,
Age: 37 yrs, Occu. Household.

2. Pravin D/o. Samindar Chavan,
Age: 21 yrs, Occ. Education.

3. Prajakta D/o. Saminder Chavan,
Age: 16 years, Occ. Education.
All R/o. Medsi, Tq. Malegaon,
Dist. Washim. At present All R/o.
Nanded, Tq. & Dist. Nanded.

4. Vinod S/o Prakash Rathod,
Age: Major, Occ. Business,
(Owner of Auto bearing No.
MH-26-AC-0273),
R/o. Chabrha, Tq. Hadgaon,
Dist. Nanded. ...RESPONDENTS
[Resp No. 1 to 3 are orig claimant and Resp No. 4 is original respondent No. 1]

Mr. R.F. Totala, Advocate for appellant
Mr. B.R. Kedar, Advocate for respondents No. 1 to 3.

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 19th AUGUST, 2024
PRONOUNCED ON : 2nd SEPTEMBER, 2024

JUDGMENT :

1. Heard.

2. Admit. Taken up for hearing with the consent of the parties.

3. This appeal filed by Insurance Company under section 173 of Motor Vehicles Act, challenges judgment and award dated 03.03.2016 passed by District Judge-1 & E.O.M. of Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 178/2012.

4. On 05.03.2012 Samindar S/o of Kondu alias Kodu Chavan was proceeding towards railway station in auto bearing registration No. MH-26-AC-0273. Driver of the auto was driving the auto in rash and negligent manner and was trying to overtake near Patel colony on Nagarjuna Hotel to Annabhau Sathe Chowk Road, Nanded. At that time, deceased fell on the road and sustained grievous injuries. He was admitted in S.G.G.S. Hospital, Nanded, he expired on the same day during the treatment.

5. Claimants filed claim petition claiming compensation of Rs. 10,00,000/- contending that deceased was a mason and was earning Rs. 9,000/- per month.

6. Insurance Company opposed the claim by filing written statement denying contentions of claimants and *inter alia* contending that statutory liability of the insurance company is limited, and it depends upon the premium amount paid by respondent No. 4. The premium amount will be confirmed and if the premium amount is not confirmed, insurance company is not liable to pay the compensation. Breach of policy was also claimed. The insurance company, therefore, denied its liability to pay the compensation.

The Tribunal after going through the evidence led by the parties, partly allowed the claim and held owner and insurance company jointly and severally liable to pay compensation of Rs. 6,61,000/- along with 9% interest per annum. Insurance Company is aggrieved by fastening of lability on it.

7. Heard learned advocate for the insurance company and learned advocate for respondents No. 1 to 3/claimants. Though served, none appears for respondent No. 4/owner.

8. Learned advocate for insurance company assailed the impugned judgment and award contending that the insurance company has specifically raised a defence in the written statement that liability of the insurance company will be confirmed after verifying the premium amount paid by owner of the offending vehicle. He submits that owner has not paid any premium towards occupants of the offending vehicle and therefore, insurance company is not liable to pay the compensation amount. By tendering certified copy of insurance policy across bar he submits that no premium was paid for the occupants and therefore insurance company is not liable to pay the compensation. He fairly concedes that this copy of the insurance policy was not placed before the Tribunal. Therefore, according to him, opportunity needs to be given to the insurance company to prove the certified copy of the insurance policy on record and for that purpose matter may be remanded back to the Tribunal by setting aside the impugned judgment and award to the extent it holds insurance company liable to pay the compensation.

He further submits that there is no permit issued to the offending vehicle for carrying passengers and therefore there is breach of policy condition and this aspect is ignored by the

Tribunal. He submits that excess compensation is awarded by the Tribunal, which is liable to be reduced. In support of these submissions, he relied on ***Jagtar Singh alias Jagdev Singh vs. Sanjeev Kumar and others***, (2018) 15 SCC 189 and ***National Insurance Company Ltd. vs. Balakrishnan & Another***, 2013 (1) SCC 731.

9. Per contra, learned advocate for claimants has strenuously opposed the submissions of insurance company and supported the impugned judgment and award. He submits that there is no material on record to show that policy is of limited liability. The witness of the insurance company has admitted in his evidence that two unnamed persons are covered in the policy. He submits that no case is made out by insurance company for remand of matter and the Tribunal has properly appreciated the evidence on record.

By relying on decision of this Court in First Appeal No. 2079/2018 and 2176/2012, he submits that though claimants have not preferred first appeal for enhancement of compensation, claimants can seek enhancement of compensation in view of decision of Apex Court in ***Nagappa Vs. Gurudayal Singh and Others***, (2003) 2 SCC 274 and ***Jitendra***

Khimshankar Trivedi and Others Vs. Kasam Daud Kumbhar and Others, (2015) 4 SCC 237. By relying on ***Kavita wd/o Ravindra Gurnule and Others vs. Maharashtra State Roads Transport Corporation and Others***, 2019 (6) ALL M.R. 323, he submits that income of the deceased ought to have been assessed at Rs. 6,000/- per month. Further submission is that the Tribunal has erred in awarding meager amount under the head, non pecuniary losses and loss of estate, in terms of decision in ***National Insurance Company Limited vs. Pranay Sethi and others***, (2017) 16 SCC 680. In support of his submissions, he also relied on ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and Others***, 2018 DGLS (SC) 909.

10. Heard learned advocate for insurance company and learned advocate for claimants at length. Perused the record.

11. Record indicates that insurance company has examined its employee Sadashiv Asole and has brought on record copy of private car liability only policy of the offending vehicle at Exhibit-48. In cross examination he has categorically admitted that in this policy liability of a driver and other two persons is covered. These two persons include a unnamed person and an employee of insured. On perusal of said policy

and considering the admission given by Mr. Asole, Tribunal has held that "*according to this policy unlimited liability cover of two un-named persons i.e. the employees of insured is covered*." In the light of admission given by Mr. Asole, employee of the insurance company, it is clear that in the policy liability of driver and two other persons is covered. Hence, no fault can be found with the said finding recorded by the Tribunal.

12. Much stress is laid by learned advocate for insurance company on the certified policy copy tendered across the bar at the time of hearing of first appeal. He fairly conceded that said copy was not placed before the Tribunal at the time of hearing of the claim. No application for leading additional evidence is also filed in the present first appeal. Therefore, this copy of the policy cannot be taken into consideration for decision of present appeal on merits.

13. No evidence is brought on record by the insurance company to show that there was breach of conditions of policy. In that view of the matter, Tribunal is justified in holding insurance company liable to pay the compensation.

14. In Jagtar Singh (supra) and Balakrishnan (supra),

the policy was "Act Policy" therefore the Apex Court exonerated the insurance company.

In the case in hand, since insurance company has admitted in the evidence that this policy covered two persons this ruling will not help the case of insurance company.

15. Learned advocate for claimants is justified in submitting that just and fair compensation is not awarded by the Tribunal and he is entitled to agitate this aspect in the present first appeal filed by the insurance company in view of ratio in Nagappa (supra) and Jitendra Trivedi (supra), which is followed by this Court in First Appeal Nos. 2079/2018 and 2176/2012.

16. In the case in hand, it is claimed that deceased was a mason and was earning Rs. 300/- per day, he was maintaining the family of three persons. Admittedly, he was the sole earning member of the family. The Tribunal without assigning any reason has assessed notional income of deceased at Rs. 3,000/- per month. In view of notification published by Ministry of Labour and Employment under section 4(1B) of the Employee's Compensation Act, 1923, in Gazette of India on 31.05.2010, the Central Government has specified minimum monthly wages of unskilled workers at Rs.8,000/- p.m. In the present case,

deceased was working as mason, hence, notional income of deceased needs to be assessed at Rs. 8,000/- per month.

17. In Magma General Insurance (supra) it is held that, "*the Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award just compensation, irrespective of whether any plea in that behalf was raised by the Claimant*." In this case, Apex Court has awarded Rs. 50,000/- each to the claimants towards loss of love and affection and Rs. 15,000/- towards loss of estate.

18. In the present case Tribunal has awarded Rs. 30,000/- towards loss of consortium and Rs. 30,000/- towards love and affection, which is grossly inadequate in terms of ratio in Pranay Sethi (supra) and Magma General Insurance (supra). This Court is of the view that, Rs. 1,00,000/- needs to be awarded to claimant No. 1 towards loss of consortium and Rs. 40,000/- each to claimant Nos. 2 and 3 towards loss of love and affection as per ratio in Pranay Sethi (supra). Towards funeral expenses and loss of estate also meager amount is awarded. Claimants are therefore entitled for Rs. 15,000 towards funeral expenses and Rs. 15,000/- towards loss of estate. Claimants are therefore entitled for following compensation:

Sr. No.	Heads	Amount (Rs.)
1	Notional Income Rs. 8,000+ future prospects @ 50% i.e. 4,000/-	12,000/-
2	Annual Notional Income 12000 x 12	1,44,000/-
3	1/3rd deduction towards personal expenses i.e. Rs. 48,000/- (1,44,000-48000)	96,000/-
4	Annual Notional Income Multiplied by multiplier of 16 (96,000 x 16)	15,36,000/-
5	Compensation under Non Pecuniary Losses- i) Loss of Consortium to Claimant No. 1- 1,00,000/- ii) Loss of Love and affection to claimant Nos. 2 and 3- 40,000/- each iii) Funeral Expenses- 15,000/- iv) Loss of Estate- 15,000/- v)Cost of transportation- 5,000/- (already awarded by Tribunal)	2,15,000/-
6	Total compensation to be awarded (15,36,000+2,15,000)	**17,51,000/-**
7	Compensation awarded by Tribunal	**6,61,000/-**
8	**Total Enhanced compensation (17,51000 – 6,61,000)**	**10,90,000/-**

19. In the result, following order:

ORDER

(I) First Appeal filed by insurance company is dismissed with no order as to costs.

(II) Impugned judgment and award dated 03.03.2016, passed by District Judge-1 & E.O.M. of M.A.C.T., Nanded in M.A.C.P. No. 178/2012 is modified, to the effect that claimants are held entitled for enhanced compensation of Rs. 10,90,000/- to be paid by Insurance Company and respondent No. 4 jointly and severally within 12 weeks from the date of uploading of this judgment.

(III) Claimants shall be entitled for interest @ 9% per annum on the enhanced compensation from the date of filing of claim till realization.

(IV) Rest of the award is confirmed.

(V) Modified award be prepared accordingly.

(VI) Claimants to pay court fees on enhanced compensation as per rules.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde