2024:BHC-AUG:22981

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2689 OF 2015

The Branch Manager,
New India Assurance Company Ltd.,
Shivaji Cross Road, Shrirampur,
Tal: Shrirampur, Dist. Ahmednagar. ….APPELLANT
[Orig. Respondent No. 2]

VERSUS

1. Jyoti Kailas Palande
   Age: 33 years, Occu: Household.

2. Kum. Swati D/o Kailas Palande,
   Age: 15 years, Occu: Education (10th)

3. Swapnil S/o Kailas Palande
   Age: 13 years, Occu: Education (8th)

4. Sachin S/o Kailas Palande,
   Age: 11 years, Occu: Education (6th)

5. Shri. Shravan S/o Tulaji Palance
   Age: 69 years, Occu: Nil.

6. Sau. Latika Shravan Palande,
   Age: 64 years, Occu: Nil.
   Respondent No. 1 for herself and for
   Respondent Nos. 2 to 4 as natural mother
   guardian. All are resident of Kolhar Khurd,
   Tal: Rahuri, Dist. Ahmednagar.
   At present Davkhar Road, Shrirampur,
   Tal: Shrirampur, Dist. Ahmednagar. …..RESPONDENTS
   [Original Claimant No. 1 to 6]

7. Shri. Sahebkha Miyabhai Shaikh
   Age: Major, Occu: Business
   R/o. Shivajinagar, Kolhar Bk.,
   Tal. Rahata, Dist. Ahmednagar. ...RESPONDENT
   [Orig. Respondent No. 1]

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Mr. Vinodkumar R.Mundada , Advocate for Appellant
Mr. Shaikh Mazhar A. Jahagirdar, Advocate for respondents No. 1 to 6

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd SEPTEMBER 2024

JUDGMENT :

1. Heard.

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

3. This appeal filed under Section 173 of Motor Vehicles Act, takes exception to the judgment and award dated 02.04.2015 passed by Motor Accident Claims Tribunal, Shrirampur in M.A.C.P. No. 93 of 2014.

4. Facts giving rise to the present first appeal can be stated in nutshell as follows:

On 10.05.2014, Kailas Palande had gone to village Kolhar Bk on Hero Honda motorcycle No. MH-17-P-2877, for repairing electric motor. When his motorcycle reached upto the petrol pump of Kolhar Bk., one TATA Sumo jeep No. MH-17-AJ-4485, driven by Salim Vajeer Sayyed in rash and negligent manner dashed the motorcycle, due to which Kailas sustained severe head injury and other injuries. He was admitted in Pravara Hospital, Loni and from there he was taken to Nobel Hospital, Ahmednagar. During treatment, on 11.05.2014, he expired. Respondents No. 1 to 6/claimants, therefore, filed claim petition contending that Kailas was having agriculture land at village Kolhar Bk and he possesses five to six cows. He was earning Rs. 15,000/- from milk business and Rs. 10,000 to 12,000 per month from mason work. Thus, he was earning Rs. 25,000/- per month. Claimants, therefore, claimed compensation of Rs. 10,00,000/-.

5. Insurance Company by filing written statement opposed the claim contending that on account of delay of 17 days in registering FIR, involvement of offending jeep is suspicious and doubtful. Without prejudice to this submission it is submitted that driver of sumo jeep committed breach of policy conditions as he was not holding valid and effective driving license. The insurance company, therefore, prayed for rejection of claim petition.

6. The Tribunal after recording evidence, partly allowed the claim and awarded compensation of Rs. 8,17,000/- inclusive of no fault liability amount along with interest @ 9% p.a.. Being

aggrieved by the same, insurance company has filed the present appeal.

7. Heard learned advocate for Insurance Company and learned advocate for claimants/respondents No. 1 to 6.

8. Learned advocate for the insurance company assailed the impugned judgment and award contending that claimants have failed to prove involvement of offending jeep in the accident. FIR of the alleged accident has been registered after a delay of 17 days and collusive claim is filed by the claimants to gain compensation from the insurance company. Driver of the offending jeep was not made party respondent nor he was examined to prove negligence. The Tribunal has wrongly assessed age of the deceased and thereby applied wrong multiplier. No panchnama of offending jeep is conducted by the police authorities. All these aspects raise serious doubt about involvement of offending vehicle. Hence, Tribunal ought to have exonerated insurance company. In support of his case he relied on ***Pukh Raj Bumb vs. Jagannath Atchut Naik and Others***, 2014(4) Mh.L.J. 447, ***Bajaj Allianz General Insurance Co. Ltd., Aurangabad vs. Meera W/o Raju Choudhary and Others***, 2014(6) Mh.L.J. 556, ***First Appeal No. 2973/2013 (New India Assurance***

Company Ltd. vs. Laxman S/o. Dadarao Karpe and Others) and *First Appeal No. 3421 of 2011 (Faridabegum Shaikh Yousuf and Others vs. Daulat Khan Sardar Khan (Died) through L.Rs and another)*.

9. Learned advocate for the claimants, on the other hand, supported the impugned judgment and award to the extent it holds insurance company liable to pay the compensation. He submits that since charge sheet is filed against driver of the offending jeep, Tribunal is justified in holding insurance company liable to pay the compensation.

He further made a grievance that the Tribunal has not awarded just and fair compensation. According to him, notional income of the deceased assessed by the Tribunal at Rs. 3,000/- per month is too meager and it should have been assessed on higher side. The Tribunal has failed to appreciate that deceased was maintaining family of six members and therefore, on this ground also assessment of notional income of 3,000/- per month is wrong. He, therefore, submits that compensation awarded by the Tribunal needs to be enhanced in the present case.

10. Heard learned advocate for insurance company and

learned advocate for claimants at length. Perused the record and citations relied on by the parties.

11. It is a matter of record that charge sheet is filed against driver of the offending jeep, therefore, merely because FIR was registered after a delay of 17 days that by itself is not sufficient to jump to a conclusion that offending vehicle was not involved in the accident. Claimants by relying on the investigation papers and the charge sheet have discharged their initial burden of proving that offending vehicle was involved in the accident. It is settled legal position that claimants have to establish their case on the touchstone of preponderance of probability and not by standard of proof beyond reasonable doubt. In this view of the matter, claimants have discharged prima facie burden of proving that offending jeep was involved in the accident. Admittedly, insurance company has not led any evidence to disprove this fact.

12. In First Appeal No. 2973 of 2013, this Court considering the fact that in the FIR complete number of the offending car was not mentioned and no eye witness account was brought on record has held that, "*offending vehicle was not involved in the accident*."

In the case in hand, in the FIR, number of the offending vehicle is stated.

13. In First Appeal No. 3421 of 2011, this Court in the facts of that case held that, offending vehicle was not involved in the accident. This decision is rendered in different facts and does not further the case of the appellant.

14. In Meera Choudhary (supra), investigation of the accident was carried out by police inspector, who was not authorized to do so. The police inspector on the basis of information from discreet source had concluded that offending vehicle was involved in the accident. However, no statement of said discreet source/statement of any person was annexed to the final report nor said person was examined before the Court. In these facts, this Court held that, "*claimants failed to establish involvement of vehicle insured with the insurance company*."

It appears from the record that along with charge sheet statement of one eye witness namely Prakash Lokhande is also recorded. In this view of the matter, this judgment is of no assistance to the case of appellant.

15. In Pukh Raj Bumb (supra), claimants therein failed to prove panchnama and sketch on record, therefore, Division

Bench of this Court rejected the claim.

Such are not the facts of the present case. Hence, this decision also is of no assistance to the case of appellant.

16. There is no merit in the contention of insurance company that age of the deceased was wrongly assessed by the Tribunal. Admittedly, in the post mortem notes, age of the deceased is stated to be 38 years. Even in the death report age of the deceased is stated as 38 years. Considering this, it cannot be said that the Tribunal has committed any error in holding that deceased was aged 38 years at the time of accident and applying multiplier of 15.

17. It is settled law that even without filing separate appeal or cross-objection claimants can seek enhancement of compensation in view of judgments of Hon’ble Apex Court in case of ***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.

18. There appears substance in the in the contention of claimants that Tribunal has erred in assessing notional income of the 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. Considering the fact that deceased was maintaining the family of six persons, it is difficult to believe that he was earning Rs. 100/- per day at the time of accident. The Tribunal ought to have assessed notional income of deceased at Rs. 8,000/- per month.

19. In the light of aforesaid reasons, claimants are held entitled for following compensation.

Sr. No.	Heads	Amount in Rs.
1	Monthly Salary	8,000/-
2	Future Loss of income (8,000 x 12)	96,000/-
3	Less 1/5th towards personal expenses i.e. 19,200/- (96000-19200)	76,800/-
4	Multiplier of 15 (76,800 x 15)	11,52,000/-
5	Non pecuniary damages granted by Tribunal: i) Consortium to claimant No. 1 Rs. 1,00,000/- ii) Love and affections Rs. 30,000 each i.e. Rs. 1,80,000/- iii) Loss of care and guidance to claimants No. 3, 4, and 5 Rs. 25,000/- each i.e. Rs. 75,000/- iv) Funeral Expenses Rs. 20,000/- v) Conveyance Rs. 10,000/-	3,85,000/-
	Total Compensation needs to be awarded	15,37,000/-

	Less Compensation awarded by Tribunal	8,17,000/-
	Total Enhanced Compensation (Rs. 15,37,000 - 8,17,000)	**7,20,000/-**

20. In the result, following order:

ORDER

(i) First Appeal filed by Insurance Company is hereby dismissed.

(ii) Impugned Judgment and award dated 02.04.2015 passed by Motor Accident Claims Tribunal, Shrirampur in M.A.C.P. No. 93 of 2014 is modified to the effect that claimants are held entitled for enhanced compensation of Rs. 7,20,000/- along with interest @ 9% p.a. from the date of claim petition till its realization.

(iii) Insurance Company shall pay the enhanced compensation along with accrued interest in the Tribunal within 12 weeks from the date of uploading of this judgment. On such deposit, claimants shall be entitled to withdraw the same.

iv) Rest of the award is maintained.

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

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde