2024:BHC-AUG:20225

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2665 OF 2015

The New India Assurance Co. Ltd.
Regd. Office of New India Ass. Co. Ltd.
87 M G. Road, Fort, Mumbai 400001
Through its authorised signatory,
Administrative Officer, Legal Hub,
Aurangabad. … Appellant
(Orig. Resp. No.2)

VERSUS

1. Smt. Sangita Wd/o. Balwantrao Sonawane
   Age: 71 years, Occu.: Household

2. Kum. Sruti d/o Balwantrao Sonawane
   Age: 17 years, Occu.: Education

3. Aditya S/o Balwantrao Sonawane,
   Age: 12 years, Occu.: Education

   Respondent Nos.2 and 3 minors through
   next friend Respondent No.1
   Sangita Balwantrao Sonawane

4. Shri Bhaskarrao Bhikaji Sonawane,
   Age: 87 years, Occu. Nil

5. Sau. Kalabai Bhaskarrao Sonawane,
   Age: 80 Years, Occu.: Nil

6. Shaikh Nayab Maqdoom S/o Shaikh
   Nayab Shafiuddin,
   Age: 47 years, Occu.: Transport,
   R/o H.No.9-17-1440, Hashmi Colony,
   Nazamabad, A.P.

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Mr. Dhananjay P. Deshpande, Advocate for Appellant
Ms. Sabhat T. Kazi, Advocate for RespondentsNo.1 to 5

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 27th AUGUST, 2024

ORAL JUDGMENT :

1. By this appeal filed under section 173 of the Motor Vehicles Act, insurance company challenges the judgment and award dated 18.06.2015 passed by Motor Accident Claims Tribunal, Amalner in M.A.C.P. No.50/2011.

2. On 06.03.2011, Balwant Sonawane along with friend pillion rider Sachin Patil was proceeding on motorcycle No. MH-1919/AU-6531 from Parola to Fagane, District Dhule. When they were on the bridge of Bori river near village Vichkheda, Taluka Parola, TATA Truck No. AP-25/U-2212 came from opposite side and gave forceful dash to the motorcycle. Balwant died on the spot.

Respondents No. 1 to 5/claimants filed claim petition for compensation of Rs.65,00,000/- from opponent No.1/owner and opponent No.2/insurance company, contending that, the deceased was 40 years old at the time of accident and was working as Assistant Teacher in N.E.S. Girls High School, Parola and was getting salary of Rs.33,415/- per month.

3. Claim proceeded *ex-parte* against opponent No.1/owner. Opponent No.2/insurance company opposed the claim by filing written statement denying the statements made in the claim petition. It is contended that at the time of accident deceased was on the wrong side and hence there is contributory negligence on the part of deceased, there was a breach of terms and condition of insurance policy. Hence, insurance company is not liable to pay compensation.

4. Tribunal after recording evidence and hearing parties, held opponents No.1 and 2 jointly and severally liable to pay compensation of Rs.72,05,993/- along with interest @ 7.5% p.a. Being aggrieved by the said judgment, insurance company has filed present appeal.

5. Heard learned advocate for insurance company and learned advocate for claimants. Though served, none appears for the owner.

6. Learned advocate for appellant/insurance company assailed the impugned judgment and award on two grounds i.e. quantum of compensation and contributory negligence. According to him, the Tribunal has awarded exorbitant compensation and calculations made to arrive at the

compensation are wrong. No reason is assigned while awarding compensation of Rs.72,05,993/-. According to him, the Tribunal has failed to deduct income tax and profession tax while calculating the compensation amount. Therefore compensation needs to be reduced. According to him, as per the material placed on record, there was 50% contributory negligence on the part of deceased, therefore, compensation amount needs to be reduced on this count also. In support of his submissions, he relied on ***Padma wd/o virendra Joshi and others Vs. Maharashtra state Road Transport Corporation and another, 2021 (4) Mh.L.J. 239, Narayan Kalangutkar and another Vs. New India Insurance Co. Ltd and others, 2012 (2) Mh.L.J. 803*** and ***Shyamwati Sharma and others Vs. Karam Singh and others, (2010) 12 SCC 378***.

7. On the other hand, learned advocate for claimants, supported the impugned judgment and award. She would submit that the pillion rider Sachin Patil had lodged FIR of the accident, wherein he has stated that the offending truck dashed their motorcycle while overtaking the tanker. She further submits that Form No.16 (Exhibit-54) is a reliable document, which is placed on record by the insurance company and calculations need to be done on the basis of

income reflected in the Form No.16. Further submission is, as per Form No.16, the net salary of deceased comes to Rs.3,98,103/- p.a. after deducting income tax and profession tax. Hence, calculation needs to be done accordingly. She submits that there is no material placed on record by the insurance company to show that there was contributory negligence on the part of deceased. In view of FIR and charge-sheet filed by the driver of offending truck, claimants have *prima facie* proved that the accident has occurred due to rash and negligent driving of the driver of the offending truck. In support of her submissions, she relied on ***Mangla Ram Vs. Oriental Insuranc Co. Ltd. and Ors. AIR 2018 SC 1900*** and ***Anjali Vilas Deshpande and others Vs. Prabha Rajendra Gupta and others 2023 (1) Bom. C.R. 923***.

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

9. Accident in question is not disputed. Though learned advocate for the insurance company has tried to dispute the age of deceased, which is held as 40 years by the Tribunal at the time of accident on the basis of postmortem notes, he fairly concedes that he is claiming age of deceased was 46 years at the time of accident on the basis of PAN card, which

was not placed on record of the Tribunal. Hence, this aspect needs no consideration in absence of any documents placed on record by the insurance company.

10. Insurance company has placed on record Form No.16 of the deceased issued under the Income Tax Act. As per the said Form, deceased was receiving salary of Rs.4,12,795/- annually. From this salary, Rs.2,500/- towards profession tax and Rs.12,192/- towards income tax needs to be deducted. If these two amounts are deducted from the salary received by deceased, it is clear that the deceased was getting net salary of Rs.3,98,103/- annually. This figure needs to be taken into consideration while calculating the compensation payable to claimants. The Tribunal, however, has taken into consideration the figure of Rs.3,85,188/-. Thus, it appears that, the Tribunal has committed an error while calculating the amount of annual salary of deceased, which should be 3,98,103/-.

11. There appears no merit in the contention of appellant that exorbitant compensation is awarded by the Tribunal as if we calculate the compensation payable to the claimants by taking the figure of Rs.3,98,103/-, 50% addition needs to be made in the said amount towards future prospects in terms of ***National Insurance Company Limited Vs. Pranay Sethi and***

others reported in (2017) 16 SCC 680, which comes to Rs.5,97,154/-. From which 1/4th is to be deducted towards personal expenses of deceased as there are five claimants. By deducting 1/4th, the amount of net income comes to Rs.4,47,865/-. The Tribunal has not applied any multiplier and or has not discussed about application of multiplier of 15 in the impugned judgment and award. By applying multiplier of 15 figure comes to Rs.67,17,980/-. Tribunal has also awarded medical expenses of Rs.2,71,088/- for which the bills are produced on record by the claimants. Non-pecuniary damages awarded by the Tribunal are Rs.1,00,000/- towards loss of consortium, Rs.2,00,000/- on account of loss and care and guidance. Rs.1,00,000/- for claimants No.4 and 5 on account of loss of company, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate are liable to be maintained. Thus, the compensation of Rs.74,24,063/- is payable to the claimants.

12. By relying on the spot panchanama, learned advocate for insurance company has strenuously argued that there was 50% contributory negligence on the part of the deceased.

13. In ***Jiju Kuruvila and Others V/s Kunjujamma Mohan and Others, AIR 2013 SC 2293***, the Apex Court has held:

> *"24. The mere position of the vehicles after accident, as shown in the Scene Mahazar, cannot give a substantial proof as to the rash and negligent driving on the part of one or the other. When two vehicles coming from opposite directions collide, the position of the vehicles and its direction etc. depends on number of factors like speed of vehicles, intensity of collision, reason for collision, place at which one vehicle hit the other, etc. From the scene of the accident, one may suggest or presume the manner in which the accident caused, but in absence of any direct or corroborative evidence, no conclusion can be drawn as to whether there was negligence on the part of the driver. In absence of such direct or corroborative evidence, the Court cannot give any specific finding about negligence on the part of any individual."*

14. In ***Mangla Ram*** (supra), the Apex Court held that:

> *"Another reason which weighed with the High Court to interfere in the First Appeal filed by Respondent Nos. 2 & 3, was absence of finding by the Tribunal about the factum of negligence of the driver of the subject jeep. Factually, this view is untenable. Our understanding of the analysis done by the Tribunal is to hold that Jeep No. RST-4701 was driven rashly and negligently by Respondent No. 2 when it collided with the motorcycle of the Appellant leading to the accident. This can be discerned from the evidence of*

witnesses and the contents of the charge-sheet filed by the police, naming Respondent No. 2. This Court in a recent decision in Dulcina Fernandes (supra), noted that the key of negligence on the part of the driver of the offending vehicle as set up by the claimants was required to be decided by the Tribunal on the touchstone of preponderance of probability and certainly not by standard of proof beyond reasonable doubt. Suffice it to observe that the exposition in the judgments already adverted to by us, filing of charge-sheet against Respondent No. 2 prima facie points towards his complicity in driving the vehicle negligently and rashly. Further, even when the Accused were to be acquitted in the criminal case, this Court opined that the same may be of no effect on the assessment of the liability required in respect of motor accident cases by the Tribunal. Reliance placed upon the decisions in Minu B Mehta (AIR 1977 SC 1248) (supra) and Meena Variyal (AIR 2007 SC 1609)(supra), by the Respondents, in our opinion, is of no avail. The dictum in these cases is on the matter in issue in the concerned case. Similarly, even the dictum in the case of Surender Kumar Arora (AIR 2012 SC 1919) (supra) will be of no avail. In the present case, considering the entirety of the pleadings, evidence and circumstances on record and in particular the finding recorded by the Tribunal on the factum of negligence of the Respondent No. 2, the driver of the offending jeep, the High Court committed manifest error in taking a contrary view which, in our opinion, is an error apparent on the face of record and manifestly wrong."

15. In the present case, considering the pleadings, documents brought on record in the form of FIR and in view of filing of charge-sheet against the driver of offending truck, the Tribunal is justified in holding that accident is caused due to rash and negligent driving of the offending truck.

16. In ***Narayan Kalangutkar and another Vs. New India Insurance Co. Ltd. And others, 2012 (2) Mh.L.J. 803***, learned Single Judge of this Court in the facts of that case held that, "*claimant No.1 was not present at the time of accident and panchanama to the scene of offence panchanama and the sketch though produced the same, did not depose as to contents of the panchanama or the sketch. It is well settled by a catena of decisions that the panchanama or the sketch in any accident are not substantive evidence by themselves and can be used to corroborate the oral evidence of the pancha witness……..". "Mere production of the FIR or mere fact that the charge-sheet was filed against both the drivers by itself would not be sufficient to hold that there was rashness and negligence on the part of both these drivers or anyone of them.*"

This judgment is of no help to the appellant in view of ratio in ***Mangla Ram*** (supra), wherein it is held that:

> "*Be that as it may, the next question is whether the Tribunal was justified in concluding that the Appellant was also negligent and had contributed equally, which finding rests only on the site map (Exh. 2) indicating the spot where the motorcycle was lying after the accident? We find substance in the criticism of the Appellant that the spot where the motor vehicle was found lying after the accident cannot be the basis to assume that it was driven in or around that spot at the relevant time. It can be safely inferred that after the accident of this nature in which the Appellant suffered severe injuries necessitating amputation of his right leg above the knee level, the motorcycle would be pushed forward after the collision and being hit by a high speeding jeep. Neither the Tribunal nor the High Court has found that the spot noted in the site map, one foot wrong side on the middle of the road was the spot where the accident actually occurred. However, the finding is that as per the site map, the motorcycle was found lying at that spot. That cannot be the basis to assume that the Appellant was driving the motorcycle on the wrong side of the road at the relevant time. Further, the Respondents did not produce any contra evidence to indicate that the motorcycle was being driven on the wrong side of the road at the time when the offending vehicle dashed it. In this view of the matter, the finding of the Tribunal that the Appellant contributed to the*

> *occurrence of the accident by driving the motorcycle on the wrong side of the road, is manifestly wrong and cannot be sustained. The High Court has not expressed any opinion on this issue, having already answered the issue about the non-involvement of the offending vehicle in favour of Respondent Nos. 2 & 3.*"

17. In ***Anjali Vilas Deshpande*** (supra), the Division Bench of this Court has held that, "*Thus, total income of deceased shown in Form 16 can be attributed to his earnings. Wherever Tribunal or Court fixes an amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration and certain amount of sympathy.*"

18. In the light of decision of ***Nagappa Vs. Gurudayal Singh and Others, (2003) 2 SCC 274*** and ***Jitendra Khimshankar Trivedi and Others Vs. Kasam Daud Kumbhar and Others,*** though claimants have not claimed any enhancement of compensation, they can seek just and fair compensation in the appeal preferred by the insurance company.

19. In view of the aforestated discussion, claimants are entitled for following compensation:-

Sr. No.	Heads	Amount (Rs.)
1.	Annual Income + 50% towards future prospectus (i.e. Rs.3,98,103/- + Rs.1,99,051/- = Rs. 5,97,154/-) $1/4^{th}$ Deduction from monthly income towards personal expenditure of deceased (i.e. Rs.5,97,154 – Rs.1,49,288 = Rs.4,47,865/-)	Rs.4,47,865/-
2.	Annual dependency multiplied by multiplier (4,47,865 x 15)	Rs. 67,17,975/-
3.	Non-pecuniary Losses:- Medical expenses granted by Tribunal = Rs.2,71,088/- Loss consortium granted by Tribunal = Rs.1,00,000/- Loss of care and guidance = Rs.2,00,000/- Loss of company granted by Tribunal to Claimant Nos.4 and 5 = Rs.1,00,000/- Funeral Expenses granted by Tribunal = Rs. 25,000/- Loss of Estate granted by Tribunal = Rs. 10,000/-	Rs.7,06,088/-
7.	Total compensation needs to be awarded	**Rs. 74,24,063/-**
8.	Compensation awarded by the Tribunal	**Rs.72,05,993/-**
9.	**Enhanced compensation** (Rs.74,24,063 – Rs.72,05,993 = Rs.2,18,070/- which is rounded off to Rs.2,18,000/-)	**Rs.2,18,000/-**

20. 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 18.06.2015, passed by Member, M.A.C.T. Amalner in M.A.C.P. No.50 of 2011 is modified and claimants are held entitled for enhanced compensation of Rs.2,18,000/- to be paid by Insurance Company and respondent No.5/owner 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 petition till realization.

(iv) Modified award be prepared accordingly.

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

[NITIN B. SURYAWANSHI]
JUDGE