



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.212/2009

1. ~~Smt. Shobha wd/o Raghunath Kotkar~~
(Deleted as per Court's order
dated 23.06.2023)
2. Mohan s/o Raghunath Kotkar,
aged about 29 years, Occ. Agriculturist.
3. Manoj s/o Raghunath Kotkar,
Aged about 24 years, Occ. Student.
No. 1 to 3 all r/o Netaji Ward, Warora,
Tahsil Warora, Dist. Chandrapur.
4. Sou. Archana w/o Santoshrao Yerne,
aged about 23 years, Occ. Household,
r/o Bhiwapur Ward, Chandrapur,
Tahsil and Dist. Chandrapur.
(Original Claimant No. 1 to 4)

.....APPELLANTS

...V E R S U S...

1. Mr. Arun s/o Vitthalrao Wargantiwar,
aged about not known, business,
r/o Gurudeo Ward, Chimur,
Tah. Chimur, Dist. Chandrapur.
2. United India Insurance Company
Ltd. Chandrapur Branch, Chandrapur.
Through its Branch Manager,
'Abhishek', Mul Road, Chandrapur,
Tah. & Dist. Chandrapur.

(Policy No. 230202/31/03/42216 valid
from 29.09.2023 to 28.09.2004)
3. Oriental Insurance Company Ltd.
Chandrapur Branch, Chandrapur,
through its Manager, Chandrapur,
Tah. & Dist. Chandrapur.

(Policy No. 1622201/2004/4525
valid from 09.07.2003 to 08.07.2004)

.....RESPONDENTS

Mr. S. Agrawal, Advocate instructed by Mrs. R. S Sirpurkar,
Advocate for appellant.

Mr. A. K. Neware, Advocate for respondent no.1.

Mr. M. M. Kalar, Advocate for respondent no.2.

Mr. T. T. Mirza, Advocate instructed by Mr. A. M. Quazi, Advocate
for respondent no.3.

Mr H. Verma, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.

DATE OF RESERVING THE JUDGMENT : 25.01.2024

DATE OF PRONOUNCING THE JUDGMENT : 30.01.2024

JUDGMENT

The appellants – original applicants are aggrieved by judgment and award dated 29.02.2008 passed by the Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No.60/2004, thereby partly allowing the claim of the appellants to the extent of Rs.66,300/-, as against the claim of Rs.5,00,000/-.

2. The appellant no.1, since deceased, is wife of one Raghunath Kotkar, who expired in an accident that took place on 08.11.2004. Appellant nos. 2 and 3 are his sons and the appellant no.4 is his daughter. Respondent no.1 is the owner of offending vehicle viz. travel bus bearing No. MH-34/A-8152. Respondent no.3 is insurer of the two wheeler Bajaj M80 bearing No.MH-34/C-2235, which the deceased was riding at the time of the accident.

3. According to the appellants, the accident occurred at Ratnamala square, Warora on Chandrapur-Nagpur highway. The deceased was going towards bus stop, Warora on Chandrapur-Nagpur highway. One Vasanta Narde was pillion rider. One person namely Suresh Soyatkar, who was known to the deceased was standing below one tree towards West side of the road. The deceased stopped his Bajaj M80 to meet Suresh. At that time, the travel bus, which was coming from Chimur and going to Chandrapur gave dash to the Bajaj M80, owing to which both the rider and pillion rider sustained injuries and succumbed to same.

4. The respondents blame rider of Bajaj M80, for the accident. The tribunal, after having gone through the evidence and documents, held that the rider of Bajaj M80, contributed to the accident to the extent of 70% and accordingly held the respondent nos.1 and 2 to be jointly and severally liable to 30% of the claim. The respondent no.3-insurer of Bajaj M80, was exonerated on the ground, inter alia, that owner was not made party to the claim petition. The rider was not the owner of the two wheeler.

5. Having heard both the sides and having gone through the judgment, evidence and documents, the only evidence available on the point of accident is the investigation papers.

6. The appellant no.1 alone entered the witness box. She has admittedly not seen the accident and, therefore, her evidence on the point of negligence of vehicle is of no help. Though the appellants had come up with a case that Suresh was standing below the tree and the rider of the Bajaj M80 stopped his two wheeler to meet him, has been not examined. He would have been the best witness to the accident. Thus, the appellants have withheld the best evidence for the obvious reasons, which finds place in the judgment passed by the tribunal.

7. The tribunal noted that spot panchanama is the document that speaks of the accident. The spot panchanama, Exh.-36 shows that the road runs North-South. To the North is Nagpur and to the South is Chandrapur. The Neem tree, below which Suresh was standing, is towards East side of the road. The accident took place near this tree. The bus was coming from Chimur side i.e. from North Side and proceeding to South, meaning thereby that the bus was travelling at its correct side. The accident occurred on the tar road. The bus was standing on tar road at about 2 ft. from Neem tree. The two wheeler was lying in between two front wheels i.e. middle portion of the bus. The two wheeler was severely damaged. Its handle, head light, etc. were broken. There was, however, no damage at its rear side. The

front buffer of the bus was also damaged. The tribunal, on the basis of the spot panchanama, held that the accident speaks for itself and the only inference which is possible, in absence of any evidence to the contrary, is that the accident occurred head on, meaning thereby that the two wheeler was travelling opposite direction (from South to North) and because the Neem tree was located towards North side of the road, the two wheeler was being driven on wrong side. The tribunal has also taken note of the fact that in the spot panchanama the mark of two wheeler having been dragged for about 25 ft. has been noted. Thus, the tribunal has further noted from the First Information Report and the other documents that there were two pillion riders on the two wheeler. Thus, prime responsibility of the accident was held to be of the rider of the two wheeler and accordingly, he was held to have contributed 70% to the accident. The tribunal then considered the high speed of the travel bus on the basis of the drag mark of 25 ft. and held that, had the driver of the bus been driving in moderate speed, the accident either could have been avoided or would have resulted into lesser loss and accordingly held him responsible to the extent of 30%.

8. I do not find any perversity in the aforesaid finding. The appellants have not really come clean on the point of accident.

They have withheld the best evidence. The insurance company has also not examined the said witness. The accident as depicted from the spot panchanama was self speaking. Therefore, the tribunal rightly held that the deceased has contributed to the accident to the extent of 70% and the bus driver to the extent of 30%.

9. The only point that requires answer is whether the tribunal has correctly assessed the income of the deceased.

10. The tribunal accepted the case of the appellant that he was involved in business of grocery shop but assessed his earning at Rs.5,000/- per month. The registration certificate of shop is at Exh.-40, which shows that the deceased was proprietor of the shop styled as 'Santaji Kirana Stores', situated at Santaji Ward, Warora. The tribunal has then noted from the evidence that the appellant no.1 has admitted in cross-examination that her son is running same grocery shop and the family is maintaining themselves from the income of the shop. The tribunal has taken a view, since the business continued, there is no loss of income to the family because of death of the deceased.

11. Learned counsel for the appellant has rightly argued that this finding is perverse because this approach is unrealistic.

Had the deceased been alive, he would have carried on business of grocery shop and the son would have taken separate employment. The tribunal has missed the vital fact that the son was compelled to enter into grocery shop business because of the sudden death of his father. In normal circumstance, the father would have continued the grocery business and son would have completed his education and taken separate employment. These practicalities have been ignored by the tribunal, particularly when there was no evidence to the contrary. The tribunal has accepted that the deceased father was earning Rs.5,000/- which finding has been not challenged by the respondents and, therefore, it could be safely concluded that the loss of earning would be at the rate of Rs.5,000/- per month from the business of grocery shop.

12. The tribunal has committed yet another mistake. The appellants submitted a 7/12 extract, which shows that the deceased owned 10 Acre agricultural land. The appellant no.1 deposed that the deceased was earning Rs.6,000/- per month as profit from the business and he also owned 10 Acre of land, which he was looking after. Thus, the appellants have put forth a case that there was an additional income from the agricultural land. The appellants had filed 7/12 extract, which was ignored by the tribunal on the ground that there are no pleadings to that effect

and, therefore, the claim introduced through evidence, for the first time, cannot be included.

13. This finding apparently is contrary to the settled position of law that rules of evidence, to prove the claim while deciding application under Section 166, are not strictly applicable. In fact, the claimants need not even file claim petition. The investigation papers i.e. charge-sheet itself is to be treated as a claim petition. The object of Motor Vehicles Act, 1988, is to suitably compensate the victims of an accident. Thus, it was the duty of the investigation agency as also of the tribunal to accept the documents tendered by the appellants. Whether on the basis of documents so tendered the benefits could be extended or not, is an altogether different matter. The tribunal committed an error by not admitting 7/12 extract on the ground that there are no pleadings.

14. The 7/12 extract is in the name of the deceased Raghunath Govinda Kotkar. The land is bearing survey no.105 and admeasuring 4.52 HR (approximately 10 Acres). The 7/12 extract also indicates that in the year 2002-03, the deceased had sown four crops; Cotton, Toor, Soyabean and Jowas. The entire land is a dry crop land. The crops were sown in entire land. The tribunal, therefore, ought to have added additional income from

agricultural land while assessing total income of the deceased.

15. There is, however, no agriculture evidence of income except the statement of the appellant no.1 that the deceased was having additional income from agricultural land. Considering the area and the crops shown in the 7/12 extract, which is mainly covered by Cotton and Soyabean and the rates prevalent in the year 2004, the cotton crop should yield returns at the rate of Rs.2000/- approximately per quintal and Soyabean at Rs.800/- per quintal for Soyabean. The approximate yield of Cotton is 7-8 quintals per acre and Soyabean is 12-14 quintals. In addition, the deceased has sown Toor and Jowas. Considering the rate and the approximate yield per acre, the deceased must be earning Rs. 36,000/- per year after and deducting 50% towards labour and other charges, the income will be Rs.18,000/- per year. Thus, an addition of Rs.1500/- will have to be made in the income of the deceased. The total income of the deceased would thus be Rs.6500/- per month.

16. There is no dispute that the deceased was 53 years old and, therefore, multiplier of 11 in terms of *Sarla Verma and Ors. .Vs. Delhi Transport Corporation and anr.,* reported in *(2009) 6 SCC 121*, judgment would be justified.

17. Having assessed the income at the rate of Rs.6500/- per month and having ascertained the age, the award will have to be modified in terms of the judgment of the Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and Ors.** reported in **(2017) 16 SCC 680**, for future prospects. Additional amount for parental consortium for wife and children will have to be added. The daughter was married at the relevant time and the children were major. In the circumstances and considering the fact that accident had occurred in the year 2004, the spousal and parental consortium should be paid at the rate of Rs.10,000/- to each.

18. Thus, the modified calculation will be as under.

Sr.No	Particulars	Amount (Rs.)
1	Income from 10.0 Acres land (4.54 HR)	18000
2	Income from grocery Shop (5,000 X 12)	60000
	Total	78000
3	Add 10% (Future prospects) in terms of Pranay Sethi's case	(+)7800
	Total	85800
4	Multiplier in terms of Sarla Verma's case	(x) 11
	Total	943800
5	Deduction of 1/4th amount towards the expenditure as laid down in Sarla Verma's case.	(-) 37752
6	Spousal and parental consortium (Rs.10000/- x 4)	(+)40000
7	Loss of estate	(+)15000
	Total	961048

19. In view of above, following order is passed.

- (i) The appeal is partly allowed.
- (ii) Judgment and order dated 29.02.2008 passed by Motor Accident Claims Tribunal, Chandrapur in Motor Accident Claim Petition No.60/2004, to the extent of quantum of compensation amount, is modified.
- (iii) The claimants-appellants are awarded compensation of Rs.9,61,048/-.
- (iv) Rest of the order is kept as it is.
- (v) Award be drawn after payment of deficit court fees, if any.

(Anil L. Pansare, J.)

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