

(2009) 12 BOM CK 0135
In the Bombay High Court
Case No : First Appeal No. 572 of 1997

Housabai Dhulaji Shinde and Others

APPELLANT

Vs

Ashok Mahadeo Parlikar and Others

RESPONDENT

Date of Decision : 10-12-2009

Acts Referred:

Citation : (2011) 4 BomCR 201

Hon'ble Judges : Bhangale A.P., J

Bench : Single Bench

Advocate : A. Shelat, for the Appellant; S.K. Pardhy, for the Respondent

Judgement

Bhangale A.P., J.—The appeal is directed against judgment and award dated 13th August 1997 passed in Motor Accident Claims Petition No. 57 of 1995 by the Motor Accident Claims Tribunal, Akola.

2. Facts which gave rise to appeal are:

On 24.2.1996 at about 02.00 p.m. one Dhulaji Laxman Shinde, aged about 53 years, resident of Malegaon was travelling in vehicle No. MH. 30A.9290 belonging to Respondent No. 1 Ashok Mahadeo Parlikar while it was driven rashly and negligently on Digras-Shendurjana Road, it turned turtle. In the result, Dhulaji received head injury and died on 25.4.1994 while receiving medical treatment. Claimants contended that late Dhulaji was only earning member of their family and they were dependent on him. According to claimants, Dhulaji was working as broker in grain market and also earning Rs. 3000/- per month. His father had survived for 120 years. Claimants who are widow and children of Dhulaji claimed compensation in the sum of Rs. 3 lakhs.

3. Respondent No. 2 resisted claim on the ground that the deceased had requested to give him lift, but when driver refused to give him lift, he sat forcibly. According to driver, the accident occurred on account of driver operating brakes immediately in order to save she-buffalo and vehicle turned turtle.

4. Insurance Company denied liability and contended that claim is excessive. It is contended that deceased was travelling as passenger and owner had committed breach of policy condition and insurer is not liable to give compensation.

5. The Tribunal upon evidence led found that driver of offending vehicle MH. 30. A. 9290 was proceeding from Shendurjana to Phalegaon and driver is responsible to cause death. Claimants relied upon copy of First Information Report; copy of spot panchnama; Civil Hospital's card and postmortem notes.

6. The Tribunal awarded compensation in the sum of Rs. 80, 800/- inclusive of No. fault liability along with interest at the rate of 12% per annum from the date of application with proportionate costs.

7. Learned Counsel for Appellants submitted that insurer ought to have been held liable to compensate the claimants/ dependents of late Dhulaji. The deceased was travelling in goods vehicle as care-taker of goods in goods-carrier/ vehicle. The Tribunal held owner liable for breach of policy. Regarding claim, it is submitted that the Tribunal ought to have considered monthly earnings of deceased at Rs. 2000 (-) Rs. 666 = Rs. 1334 as loss of monthly dependency after deducting personal expenses of one-third amount. Reliance is placed upon ruling in Oriental Insurance Co. Ltd. Vs. Siyaram and Others, to argue that the deceased was travelling with his goods in the vehicle and, therefore, Insurance Company was bound to indemnify the owner of the vehicle at least in the sum of Rs. 80,040/- when computed on the basis of Rs. 2000/- per month income of the deceased plus conventional amount towards funeral expenses, loss of love and affection etc.

8. The evidence led before the Tribunal consists of evidence of driver Shankar Kondaji Bhalerao who deposed that Dhulaji Shinde was accompanying with him as care-taker of goods in the mini-truck bearing No. MH-30-A-9290 which admittedly was registered as goods vehicle. No. fare was paid or charged.

9. Under these circumstances, the computation of the monthly income would be:

Rs. 2000/- monthly earning of deceased.

Rs. 666/- one-third personal expenses Rs. 1334 x 12 = Rs. 16008/- Annual Loss of dependency.

Rs. 16008 x 5 Multiplier fixed as guided by 2nd Schedule to the Act.

Rs. 80040/- Loss of dependency.

(+) Rs. 15000/- Conventional amount towards loss of love and affection for minors/for consortium for widow; loss of estate; funeral expenses added.

Thus, amount of Rs. 95,040/- would be the compensation payable and Insurer is liable as deceased care-taker of goods travelled in the mini-truck which was admittedly insured with the Insurer during the period covering the date of accident.

10. In the case of Oriental Insurance v. Siyaram and Ors. (supra) it was held following (New India Assurance v. Asha Rani and Ors.), reported in 2003 (3) Bom.C.R. 765 (S.C.) : 2002 DGLS (soft) 975 : III 2002 A.C.C. 753 that the Insurance Company is liable to indemnify owner of the vehicle since deceased was travelling with his goods in the transport vehicle and died in the accident. Thus, considering the evidence of witness No. 1 Shankar (driver of the offending vehicle) who deposed that he had loaded goods of one Shinde (deceased in the case) who was accompanying as a care-taker of the said goods in the mini-truck bearing registration No. MH-30. A.9290 which met with accident, the Insurance Company is liable.

11. The appeal is, therefore, allowed partly as under:

The compensation award is modified to the extent of quantum. The Insurance Company; owner and driver of offending motor vehicle are liable jointly and severally to pay a sum of Rs. 95,040/- along with interest as ordered by the Tribunal. Rest of the award is maintained as it is as to directions by the Tribunal regarding payment distribution to claimants and investment, as ordered. Payment already made be adjusted accordingly. Appeal disposed of in terms of the above order.