
(2022) 06 BOM CK 0051
In the Bombay High Court
Case No : First Appeal No. 174 Of 2009

Indu And Others	Vs	APPELLANT
Parikshit And Others		RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2022) 06 BOM CK 0051

Hon'ble Judges : V.G.Bisht, J

Bench : Single Bench

Advocate : Asgar Hussain, Anita Mategaonkar

Final Decision : Allowed

Judgement

V.G.Bisht, J

1. The appellants have fled the present appeal under Section 173 of Motor Vehicles Act, 1988 (for short, "the MV Act") challenging the judgment and award dated 28th August, 2006 passed by learned Member, Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 451 of 2002. By the impugned judgment and award, the learned Member has awarded compensation of Rs. 3,28,067/- along with interest @ 7.5% p.a. from 12th June, 2002 till realization.

2. The brief facts are as under :

Petitioner No.1 is widow, petition Nos. 2 and 3 are parents and petitioner Nos. 4 to 6 are children of deceased Madhao s/o. Dattuji Gohate (for short, "the deceased"). The deceased was driving his scooter bearing registration No. MH-31/D-8835 and was proceedings to Ordnance Factory where he was employed. When the deceased reached near Sector No. 6, Defence Colony, Wadi, Nagpur, a scooter bearing registration No. MH-31/D-8275, which was coming from opposite direction rashly and negligently in a high speed, dashed against the scooter of deceased. Consequently, the deceased sufered several injuries and was removed to Medical College Hospital, Nagpur. Later on, he was admitted to other hospitals

as well and ultimately succumbed to the injuries on 23rd January, 2002.

At the time of accident, the deceased was employed with Ordnance Factory and was earning Rs. 7073/- pm. He was 48 years old. The legal representatives noted herein above accordingly filed claim petition for grant of compensation under Section 166 of the MV Act.

The owner of offending vehicle bearing registration No. MH-31/ D-8275 resisted the claim petition by filing his written statement (Exh. 14) and denied all the contentions raised in respect of manner of accident.

Similarly, respondent No.2 – insurance company also resisted the claim petition by filing written statement (Exh. 16) and also denied the accident in question. According to respondent No.2- insurance company, the deceased was not holding a valid and effective licence to drive the scooter and he did not die as direct consequences of the injuries but otherwise.

Upon considering the evidence on record, the learned Member of Motor Accident Claims Tribunal, Nagpur held that there was contributory negligence to the extent of 80% on the part of respondent No.1 whereas 20% on the part of deceased. It is this judgment and award, which is under challenge, in the present appeal.

3. Mr. Hussain, learned counsel for the appellants, invited my attention to the observation of learned Member and forcefully submitted that despite there being no evidence to prove the contributory negligence on the part of deceased yet learned Member held otherwise. Since there is no evidence to prove contributory negligence on the part of deceased, the said finding recorded by learned Member needs to be set aside. Further, according to learned counsel, in view of the dictum laid down in the case of National Insurance Co. Ltd. v. Pranay Sethi and Others 2017 ACJ 2700 the future prospects of deceased along with other benefits should be extended in favour of appellants. Therefore, on all these counts, the judgment and award needs to be modified suitably, argued learned counsel.

4. Respondent No.1 though duly served, remained absent.

5. Ms.Mategaonkar, learned counsel for respondent No.2, on the other hand, supported the findings of learned Member to the extent of contributory negligence and as far as the salary and future prospects of deceased are concerned, learned counsel fairly submitted that there is no quarrel on that ground and that can be appropriately looked into by this Court.

6. First of all, I would like to deal with the objection of learned counsel for the appellants that there was no contributory negligence on the part of deceased. In this regard, learned Member pressed heavy reliance, in absence of any other evidence, on the spot panchnama (Exh. 34).

7. I have also gone through the Crime Details Form (Exh. 34) along with spot panchnama which clearly shows that it was a road of 10 feet width where the

accident took place. It runs west to east. The deceased was riding a scooter from west to east whereas the offending scooter was proceeding from east to west. The map drawn by the investigating officer shows that the offending scooter was found lying in the middle of the road. The spot panchnama further shows that head lamp and front guard panel of the scooter was badly damaged. Similarly, the scooter of deceased was also badly damaged.

8. What is pertinent to note from the spot panchnama is that there was a pothole on the said road of 6 ft. length in north-south direction and more towards southern side of the road i.e. to say on the left side of the road. Learned Member noted all these aspects and also further rightly observed that in order to avoid the pothole, offending scooter swerved his scooter towards right side of the road and gave dash to the scooter of deceased, which was coming from opposite direction. If the map drawn is minutely seen, then it would be fair and it is rightly so taken note by learned Member that it does not show that the deceased was driving his scooter on the extreme left side of the road, rather it was some what in the middle of the road and in this obtaining situation and the fact that no other oral evidence was forthcoming, learned Member rightly noted that the deceased also contributed in the said accident.

9. Needless to say that the negligence on the part of offending vehicle was more than that on the deceased. Learned Member therefore correctly arrived at the ratio of 80:20 i.e. to say 80% contributory negligence on the part of offending scooter and 20% on the part of deceased. There is no perversity and illegality in the findings and therefore, the submissions in this regard raised by learned counsel for the appellants do not find favour with me and consequently stand rejected.

10. This takes me to the submissions of learned counsel for the appellants that learned Member did not give just compensation and therefore, the appellants should be awarded fair and just compensation. There is salary slip (Exh. 48). However, it also shows certain government deduction to the extent of Rs. 1715/- and private deductions to the extent of Rs. 1444/- and net payable amount was Rs. 4018/-. This is also properly considered by learned Member. Therefore, the annual income of deceased comes to Rs. 48,216/-. In the light of decision given in National Insurance Company Ltd. v. Pranay Sethi and Ors. (supra), the appellants are entitled to claim 10% towards future prospects, which works out to Rs. 53,037.6, because as per examination in chief of wife of deceased, the deceased was 51 years old at the relevant time. After deducting 1/4th amount, the total amount is worked out to Rs. 39,778.2. As far as the multiplier is concerned, proper multiplier would be 11 as the deceased was 51 years old. Thus, the total amount comes to Rs. 4,37,560.2. The appellants are also entitled for Rs. 15,000/- towards funeral expenses, Rs. 15,000/- towards loss of estate and Rs. 2,40,000/- towards loss of consortium (Rs. 40,000/- to each appellant/claimant). Thus, the total amount of compensation would be Rs. 7,07,560.2. Out of which, 20% is deducted towards contributory negligence of deceased, leading

to total amount of Rs. 5,66,048.16. Out of this amount, learned Member has already awarded Rs. 3,28,067/- and therefore, the remaining amount of Rs. 2,37,981.16 more needs to be given to the appellants.

11. As held by learned Member, appellant No. 4 being employed on compassionate ground, no share is given to him in compensation.

12. In view of above, I pass the following order :

ORDER

(i) First appeal is allowed.

(ii) The appellants are held to be entitled for total compensation of Rs. 2,37,981.16 along with interest @ 7.5% pa from 12th June, 2002 till realization.

(iii) The respondents to deposit the balance amount along with proportionate interest within a period of two months from today.

(iv) The appellants shall pay differential amount of court fees, if any, in view of additional amount of compensation allowed by this judgment before Motor Accident Claims Tribunal, Nagpur within two weeks from the date of computation of such additional court fees.

(v) The appellants are entitled to withdraw the said amount along with accrued interest in equal proportion.