
(2014) 09 BOM CK 0185

In the Bombay High Court

Case No : First Appeal No. 8 of 2009 and Cross Objection No. 13 of 2013

Kadamba Transport Corporation Ltd.

APPELLANT

Vs

Benedicta Fernandes e Dias

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 140

Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2015) 1 ACC 603 : (2014) 6 BomCR 371

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Shivan Desai, Advocate for the Appellant; J. Godinho, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J.—The proceedings arise out of the Judgment delivered on 01.09.2008 by Motor Accident Claims Tribunal, at Margao, in Claim Petition No. 217 of 2005. By said Judgment and Award, the Motor Accident Claims Tribunal has found Respondents before it jointly and severally liable to pay compensation of Rs. 12,48,458/- to the claimant no. 1 with interest at 9 percent from the date of application till the date of Award. The amount of no fault liability awarded u/s 140 of the Motor Vehicles Act, is directed to be adjusted against the said compensation.

2. It is not in dispute that the husband of claimant no. 1 was occupying the other vehicle involved in the accident namely Tata Mobile and expired in that accident. The claim was preferred by his widow and son (unmarried). The said son expired during the pendency of proceedings before the Motor Accident Claims Tribunal.

3. It is not in dispute that the accident occurred on 14.08.2001 on Margao-Cortalim Highway. At the relevant time, a bus with seating capacity of 40 passengers belonging to Appellant before this Court with registration no. GA-02/X-0062 was proceeding from Panjim to Vasco. The other vehicle was coming in

opposite direction i.e. was proceeding from Margao to Panjim. This other vehicle was a Tata Mobile with registration no. GA-02/C-8164. Deceased Peter Dias was in this vehicle. The accident took place at about 16.00 hours at Ambaji, Fatorda. The claimants had joined the driver of the bus Mr. Hanumant as Respondent no. 1. He has been joined as Respondent no. 3 in the present Appeal.

4. The case of the claimants is that the bus being driven by Hanumant, came in fast speed in rash and negligent manner and while overtaking another vehicle, dashed against the Tata Mobile which was on correct side of the road. Thus, the bus entered its wrong side and accident occurred. They claimed that the deceased aged 52 years was a businessman earning Rs. 25,000/- to Rs. 30,000/- per month and, therefore, sought total compensation of Rs. 15,00,000/-.

5. Advocate Shri Shivan Desai, appearing for the Appellant, Transport Corporation, has submitted that the Motor Accident Claims Tribunal has misdirected the entire inquiry inasmuch as while framing the first issue, the Court instead of looking into the negligence or rashness has only restricted its finding to the occurrence of accident. In the second issue, burden has been cast upon the Appellants to prove that Tata Mobile was being driven in rash and negligent manner and, therefore, accident occurred. Thus, he states that there is refusal to exercise the jurisdiction in accordance with law. To explain the situation, he has invited attention to the sketch map drawn on record. In order to explain the evidence on record, the Court's attention is drawn to the deposition of Sadanand Desai, who worked as conductor of said bus on that day and deposed that the Tata Mobile driven by a youngster came in fast speed in rash and negligent manner from opposite side. It attempted to overtake a motorcycle and in the process, gave a dash to the bus whereby the bus dashed against it and was dragged to its right. He contends that there is no effective cross examination of said conductor in this respect. He points out that the driver of Tata Mobile is also not a party-Respondent before the Motor Accident Claims Tribunal. Though the Motor Accident Claims Tribunal has considered the objections raised in this respect, it answered against the Appellants only because it found that there was no cross examination in that respect. He contends that the owner of the Tata Mobile as also its driver were otherwise necessary parties.

6. Coming to the compensation as awarded, Appellant does not dispute the age of the deceased. He pointed out that the multiplier to be used should have been 11 and the Motor Accident Claims Tribunal should have not used 8 as multiplier. He further submits that looking to the date of accident and evidence available on record, income of the deceased for financial year 2000-2001 from his business was the only decisive material. He points out that as per earlier returns placed on record, for assessment year 1999-2000 income from business was shown to be Rs. 2,90,618/- and in next year i.e. Assessment year 2000- 2001, it was shown as Rs. 1,59,418/-. He also points out that for assessment year 2001-2002, in return Rs. 73,779/- is the income of deceased from business. The other income

therein was from other source and, therefore, was not relevant as said income from other source continues to the benefit of the claimant. He, therefore, states that the income of Rs. 73,779/- only should have been looked into for the purpose of computing compensation by deducting one third amount therefrom and by multiplying it with eleven.

7. Advocate Shri Godinho, learned Counsel appearing for the Respondent no. 1 (Original claimant) submits that as per the Judgment of the Hon'ble Apex Court reported in *Rajesh and Others Vs. Rajbir Singh and Others*, in the case of *Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another*, in the case of *Santosh Devi Vs. National Insurance Company Ltd. and Others*, in the case of *Santosh Devi vs. National Insurance Company Limited Ors*, while computing annual income of deceased businessman (self employment), 15% of his annual income needed to be added first to his annual income to account for future potentialities. After adding this amount, one third could have been deducted therefrom and then multiplier of 11 should have been applied. He further states that as per the same Judgment, for loss of consortium, claimant should have been awarded an amount of Rs. 1,00,000/- instead of Rs. 5,000/- and an amount of Rs. 25,000/- should have been awarded towards funeral expenses instead of Rs. 2,000/-. He, therefore, states that thus calculated, the Respondent no. 1 becomes entitled to a compensation of Rs. 15,27,108/- for death of husband plus Rs. 1,00,000/- towards loss of consortium plus Rs. 25,000/- towards funeral expenditure. He, therefore, argues that as the amount awarded is not just, this Court should allow the Cross Objections filed by the Respondent no. 1 to that extent.

8. Meeting arguments of Advocate Shri Desai, he submits that the Motor Accident Claims Tribunal has decided issue nos. 1, 2, 3 and 5 together. The parties were given full opportunity to lead evidence and, as such, the language in which issues are framed or the burden mentioned therein becomes relevant. He contends that no prejudice has been caused to the Appellants due to framing of issues in a particular manner. He also invites attention to the sketch to show the manner in which the accident has taken place. He submits that the driver Hanumant has been convicted by the competent Court after prosecution and said driver did not contest the proceedings before the Motor Accident Claims Tribunal. He did not appear and enter the witness box. The Appellant, through its driver had taken three mutually inconsistent defences in said criminal prosecution namely : (1) A cattle came on road suddenly; (2) A mini bus came in front of Tata Mobile and therefore the Tata Mobile entered its wrong side i.e. came on their half of road on which the bus of the Appellant was being correctly driven; and (3) mechanical failure of the Appellants' bus. He contends that these inconsistent defences itself show the attitude of the Appellant. He further points out that the sketch shows a 40 seater bus in a field on the right hand side of the road while the Tata Mobile is standing behind it on katcha road after the tarred portion. He points out that the bus was a heavy vehicle with seating capacity of 40 passengers as compared to Tata Mobile. In this situation, the Motor Accident

Claims Tribunal looking to the defence raised before it that Tata Mobile was in the process of overtaking a motorcycle and entered the right hand side of road, has correctly formulated issue no. 1 as also issue no. 2.

9. Inviting attention to returns placed on record, Advocate Shri Godinho submits that actual income as mentioned in the returns need to be looked into and, therefore, attempted bifurcation thereof into business income and income from other sources by the Appellant is unwarranted. He submits that thus income of Rs. 1,93,077/- ought to have been looked into for the purpose of computing multiplicand. He, therefore, prays for dismissal of Appeal and for allowing the Cross Objections.

10. Advocate Shri Desai, in reply to his arguments submits that its dependency of claimant is relevant and so far income from other sources is concerned, the dependents do not suffer any loss as that income continues to be received by the family and not lost to it. He therefore urges that only business income is loss caused to the family and a decisive factor. He also argues that defence raised in criminal prosecution to avoid conviction and Judgments delivered therein are not relevant here for the purpose of adjudicating rash and negligent manner of driving by Motor Accident Claims Tribunal.

11. After hearing the respective Counsel, I find that the following points arise for determination of this Court :-

(i) Whether the claimants have established that the accident occurred on account of rash and negligent driving of bus of Appellant by bus driver ?

(ii) What is the amount of just compensation to which Respondent no. 1 claimant should be entitled to ?

12. The claimants had joined bus driver Hanumant as Respondent no. 1. Admittedly, the said driver was driving the bus of Appellant at the time of accident. He has not entered the witness box to point out how the accident occurred. Thus, best possible evidence was not made available by the Appellants to Motor Accident Claims Tribunal. It is important to note that said driver has been convicted by competent Court u/s 279 read with Section 304-A of the Indian Penal Code. The defences raised by said driver and as contended by Advocate Shri Godinho, may not be binding on present Appellant but Appellant before Motor Accident Claims Tribunal preferred to examine its conductor. The said conductor has deposed that the bus was being driven at the speed of 30 kmph as it was to halt at the bus stop at the road going to Fatorda and two lady passengers were to get down at that spot. At that time, Tata Mobile driven by a youngster came in fast speed in rash and negligent manner and while suddenly trying to overtake a motorcycle ahead of it, came in the path of his bus from the opposite direction. Thus, according to the conductor, the bus was on the left and because of dash the bus was dragged to right. This position needs to be appreciated in the background of the sketch. The sketch on record shows width of road to be 6.60 metres with katcha road of 1.30 metres on its eastern

boundary and katcha road with width of two metres on western boundary. The bus is seen standing in a field beyond katcha road on western side facing south-west. Behind it, brake marks are shown for about 9.5 metres. The brake marks begin from right hand side of said road which is wrong side for a bus proceeding from north to south on a straight road. The Tata Mobile coming in opposite direction is seen standing on katcha road on same side i.e., western side facing north. The distance between the two vehicles is about 11 metres. The spot of panchanama, exhibit 44, on record shows that there was a dent on driver's side and front tyre with disc on drivers side was damaged. Its left front tyre was separated from the body. Its front bumper was also damaged. In so far as Tata Mobile is concerned, it was totally damaged including its engine. Scratch marks were seen on the driver's side of the vehicle. These facts therefore show that the impact has taken place on wrong side of the road in so far as the bus of the Appellant is concerned. The extensive damage suffered by bus and the separation of its left tyre also show the incorrectness of the story that Tata Mobile suddenly came in front of the bus i.e. on the left side for the bus and in its front. If the story is accepted, the bus driver had taken a right turn and, therefore, dash would be on left front side of the bus and not on its driver's side. All these facts are looked into by Motor Accident Claims Tribunal while recording answers to issue nos. 1 and 2. As such, no prejudice is caused to Appellant because of framing of issue no. 2 as mentioned supra.

13. This brings the Court to the consideration of the other point i.e. quantification of just compensation and for that the actual income of deceased needs to be looked into. Three returns are placed on record. As per first return, for the financial year 1998-1999, income from business or profession is shown as Rs. 2,90,618/- while income from other sources is shown to be Rs. 37,583/-. Next return for the Assessment year 2000-2001 shows business income to be Rs. 1,59,418/- and income from other sources to be Rs. 86,012/-. The return which is relevant for the purpose of present matter, is for the Assessment year 2001-2002. In it income from business or profession is shown to be Rs. 73,779/- while income from other source is disclosed to be Rs. 1,19,298/-. The perusal of returns therefore show a gradual dwindling of business income and rise in income from other sources. The details of other sources are not brought on record by the Respondent no. 1-claimant. Motor Accident Claims Tribunal has considered the highest return business income only for the purpose of its computation. The amount worked out accordingly is on the strength of first return of record i.e. financial year 1998-1999 or financial year 1999-2000. Therefore, Motor Accident Claims Tribunal has taken into reckoning figure of Rs. 2,96,000/- only i.e. income from business and profession for the purpose of computation. It has ignored the amount of Rs. 37,583/- i.e. income from other sources. It, is, therefore obvious that looking two, three returns placed on record, income from business as received in last year i.e. Assessment year 2001-2002 only should have been considered and there is no scope for adding income from other sources to find out dependency of claimant. There is no

evidence on record to demonstrate loss of said income from other source to the claimant.

14. Advocate Shri Desai, learned Counsel, has fairly pointed out that the Motor Accident Claims Tribunal has erred in applying a lower multiplier. It is not in dispute that the multiplier looking to the age of the deceased should have been 11. Shri Desai, due to the binding Judgment of the Hon''ble Apex Court has also not disputed entitlement of claimant to compensation of Rs. 1,00,000/- on account of loss of consortium and funeral expenses of Rs. 25,000/-.

15. In this situation, the amount of Rs. 73,779/- shown as business income of deceased for Assessment Year 2001-2002 for the purpose of computation can be read as Rs. 75,000/- and by adding 15 percent amount to it towards loss of future potential, the said amount works out to Rs. 86,250/-. Subtracting one third of this, the multiplicand comes to Rs. 57,500/-. When this multiplicand is multiplied by 11 as multiplier, the product works out to Rs. 6,32,500/-. By adding to it, the amount of Rs. 1,00,000/- towards loss of consortium and Rs. 25,000/- towards funeral expenses, the total entitlement of Respondent no. - 1 claimant works out to be Rs. 7,57,500/- subject to deduction of Income Tax. The Respondent no. 1-claimant is also entitled to 9 percent interest on this amount from the date of filing of the Claim Petition till its realisation.

16. Accordingly, Appeal filed by the Appellant is partly allowed. Cross Objections filed by Respondent no. 1 is rejected. The claimant is entitled to an amount mentioned supra with interest as mentioned above. The Appellant has deposited an amount of Rs. 16,44,745/- with the Registrar of this Court and Office endorsement dated 30.10.2010 shows that FDR was encashed prematurely. Demand Draft for Rs. 5,48,248/- representing one third of said amount was drawn in favour of Respondent no. 1-claimant and handed over to her. Balance amount of Rs. 10,96,497/- is invested in Fixed Deposit. Thus, out of this balance amount, the deficit to make up total compensation amount of Rs. 7,57,500/- with interest calculated at 9% as noted supra shall be allowed to be withdrawn by the Respondent no. 1. The balance amount along with interest accrued upon it shall be paid back to the Appellant.

17. Appeal is thus partly allowed and Cross Objection is dismissed with no Order as to costs.