
(1989) 04 BOM CK 0046
In the Bombay High Court
Case No : F.A. No. 828 of 1984

Maharashtra State Road Trans. Corpn. APPELLANT
Vs
Pushpaben Rajarambhai Patel and Others RESPONDENT

Date of Decision : 25-04-1989

Acts Referred:

Citation : (1990) ACJ 196

Hon'ble Judges : Sujata Manohar, J; C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : G.S. Hegde, for the Appellant; R.M. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Dharmadhikari, J.—This appeal is filed by the Maharashtra State Road Transport Corporation against the award passed by the District Judge and Member of the Motor Accidents Claims Tribunal, Dhule dated 28th April, 1984 granting to the claimants an amount of Rs. 1,02,937/- as compensation with interest at the rate of 6 per cent per annum from the date of application till its realisation.

2. On the morning of 26th November, 1982 at about 9.30 a.m. Rajarambhai, the deceased, was going on motor cycle No. MTC 2546 from Pimpalod to Nandurbar. Purshottambhai was sitting on the pillion seat and Rajarambhai was driving the vehicle. The deceased Rajarambhai was holding a valid driving licence. The accident took place in the outskirts of Nandurbar town on Nandurbar-Korit Road. S.T. bus No. MTB 5147 owned by the appellants and driven by its employee Pandurang came from the opposite side. At the spot of the accident there is a turn and while the bus was negotiating the turn, it is alleged that it came on the wrong side and hit the motor cycle of the deceased. As a result the deceased suffered multiple fractures and Purshottambhai was also injured. Rajarambhai was taken to Jaya Prakash Narayan Hospital, Nandurbar for medical treatment. As his condition became serious he was taken to Surat for further treatment on

the same day. However, he died on 2.12.1983 as a result of the injuries suffered by him in the accident. It is the case of the claimants that they spent about Rs. 10,000/- for medical treatment, Rs. 5,000/- for the transport, Rs. 10,000/- for funeral and obsequies and Rs. 6,000/- for motor cycle repairs. On all these counts the claimants claimed Rs. 5 lakhs by way of compensation from the opponents.

3. The claim made by the claimants was contested by the Corporation as well as the driver. It is not disputed that at the material time Pandurang was driving the S.T. bus in the course of his employment. However, it is contended by the appellants-opponents that the driver was driving the bus carefully at moderate speed on the extreme left side of the road. It is the motor cycle which came on the wrong side and hit the bus. In order to avoid the accident the bus driver tried to reduce the speed by applying brakes but the motor-cyclist lost his control and the accident took place. Thus in substance it is the case of the appellants that the driver of the motor cycle was responsible for the accident. The claim made by the claimants was also denied. After framing necessary issues and appreciating the evidence on record, the learned Member of the Tribunal came to the conclusion that the deceased Rajarambhai died in the accident which took place due to rash and negligent driving of the S.T. bus driver. As a necessary consequence of this finding the learned Member partially allowed the claim made by the claimants. As already observed, it is against this finding that the present appeal is filed by the Corporation. Being aggrieved by the quantum of compensation granted by the learned Member the claimants have also filed cross-objections, wherein the claimants have claimed an amount of Rs. 1 lakh more as compensation. In the cross-objections a statement is made that the claim in the cross-objection is restricted to Rs. 1 lakh only.

4. With the assistance of the learned counsel appearing for both sides we have gone through the entire evidence on record. The factum of accident is not disputed nor it is disputed that Rajarambhai died in the said accident. However, a dispute is raised as to whether the accident took place because of rash and negligent driving of the bus driver or the driver of the motor cycle. In support of their case the claimants have examined Purshottambhai witness No. 3. Admittedly, Purshottambhai was sitting on the pillion seat when the accident took place. He has stated on oath that they were going on the motor cycle from south to north side. The speed of the motor cycle was 20 km. per hour. From the opposite direction S.T. bus came at a high speed and hit the motor cycle. Both of them were thrown away and became unconscious. It was further stated by Purshottambhai that the accident took place on the turning. The road is in north south direction and it then turns towards west side. The turn is of 90 degree angle. The bus was going in west east direction. The motorcyclist had not negotiated the turn when the accident took place. The bus took turn and hit the motor cycle. A suggestion was made in his cross-examination that there are wild bushes to the west of the road. It was also suggested that the accident took place because of the rash and negligent driving of the deceased which suggestion

was obviously denied. Pandurang, the driver of the bus, was examined as witness No. 1 for the opponents. According to him he was driving the bus at slow speed. The pillion rider and the deceased were chitchatting and the driver of the motor cycle was not attentive. He gave horn. The driver of the motor cycle lost control over the vehicle and therefore hit the right side head lamp of the bus. It was then stated by Pandurang that the pillion rider got up and went away. He was not injured and it was only the motor cycle driver who was injured. He admitted that the motor cycle was found lying on the kacha road. Panchanama of the scene of offence was also drawn in his presence. To say the least it was not suggested to Purshottambhai when he was in the witness box that he and the deceased were chitchatting. The statement made by Pandurang in his deposition that Purshottambhai was not injured is obviously false since Dr. Ravindra Kulkarni has stated on oath that Purshottambhai was also brought to his dispensary in injured condition. There was no cross-examination of the doctor. Therefore, in our view the learned Member of the Tribunal was wholly justified in accepting the evidence of Purshottambhai and discarding the evidence of Pandurang. If the recitals in the panchanama are read with the evidence of Purshottambhai it is more than clear that the S.T. driver was negotiating the turn and while doing so came to the wrong side and thus hit the motor cycle. Panchanama Exh. 33 further shows that the motor cycle was found lying 4 ft. away on the kacha road to the east of the tar road. The bus was standing about 30 ft. away from the motor cycle. There were brake marks of the bus upto 28 ft. The headlight on the side of the driver seat of the bus was broken and the front bumper on that side was also pressed inside. Therefore, it is apparent that the S.T. driver took a turn without taking due care and thereby hit the motor cycle. From the recitals in the panchanama it is also clear that the bus was coming at a high speed. If the evidence on record is read with the panchanama then the only conclusion possible is that the accident took place as a result of rash and negligent driving of the S.T. bus driver. Therefore, we have no hesitation in confirming the said finding. Thus it will have to be held that the deceased was not responsible for the accident and the accident took place because of rash and negligent driving of Pandurang, the S.T. bus driver.

5. So far as the quantum of compensation is concerned, from the evidence of Pushpaben, wife of the deceased, it is clear that he was aged about 38 to 40 years. He was M.A., Ph.D. He used to cultivate lands personally. He owned about 32 acres of land at Pimpalod. The deceased was also taking part in social activities. He was sarpanch of grampanchayat at Pimpalod. According to Pushpaben all the claimants were dependent upon the deceased and he used to earn a net income of about Rs. 40,000/- per year from the lands. In addition to this he was earning about Rs. 10,000/- per year from the milk business. He owned a truck and used to earn about Rs. 10,000/- from the transport business. Pushpaben further stated that after the death of Rajarambhai, her name is mutated in the record of rights so far as the agricultural lands are concerned. She then stated that after the death of her husband they stopped milk business

as there is nobody to look after the cattle. She admitted that even after the death of her husband they are getting some income from the transport business. She then stated that Rajarambhai was an income tax payer. The learned Member of the Tribunal has partially disbelieved Pushpaben. According to the learned Member it would be reasonable to hold that the deceased was earning about Rs. 1,200/- p.m. and was contributing about Rs. 600/- p.m. to the family. He has recorded a finding that at the time of accident the deceased was about 40 years of age. The learned Member has calculated the loss at the rate of Rs. 600/- per month for 25 years and thereafter has deducted 50 per cent of the amount for uncertainty of life and lump sum payment, and therefore, granted Rs. 90,000/- on that count.

6. We find it difficult to subscribe to the view of the learned Member. The finding of the learned Member that it is unlikely that the widow would dispose of cattle when she cultivates the lands personally is wholly unsustainable. In our view when the widow had stated so in her deposition and there is no cross-examination in that behalf, her statement that they had stopped milk business and had disposed of the cattle deserves to be accepted. Further it has come on record that the deceased was an influential person. He alone was looking after the business of the family. He was closely associated with the activities of co-operative movement and was M.A., Ph.D. In any case if an earning member of the family who was supervising the cultivation as well as the business dies in an accident, the family is bound to suffer. The learned Member has calculated the loss to the family by holding that the deceased was earning about Rs. 1,200/- per month. In our view, if the evidence of Pushpaben is accepted minimum it could safely be held that the deceased was earning not less than Rs. 1,500/- per month and was contributing to the family expenses at least Rs. 1,000/- p.m. We are taking the minimum income into consideration though the evidence indicates that it could be on the higher side, since the claim in the cross-objections is restricted to 1 lakh only. If the loss to the family is calculated at the rate of Rs. 1,000/- p.m. for 25 years then the amount of compensation must come to Rs. 3 lakhs. We do not understand on what basis the learned Member of the Tribunal has deducted 50 per cent of the amount from the compensation for the uncertainties of life or payment of lump sum. We do not find any principle behind this. Normally compensation is calculated either by applying proper multiplier or on the basis of span of life. If the proper multiplier is applied after taking into consideration the uncertainties of life, lump sum payment etc. then in our view there is no scope for further deduction on the same count. Such a view has been taken by the Division Bench of this court in Maharashtra State Road Transport Corporation Vs. Babalal Daud Mulani and Others, . The law on this point has been analysed by the Himachal Pradesh High Court in Milap Kaur and Others Vs. The Secretary, Himachal Pradesh Public Works Department (Irrigation), Govt. of H.P. and Another, , wherein a reference is made to the aforesaid decision, i.e., Maharashtra State Road Transport Corporation's case (supra) to which one of us (Dharmadhikari, J.) was a party. As observed by the Supreme Court in Concord

of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others, , "the determination of the quantum must be liberal, not niggardly since the law values life and limb in free country in generous scales". To say the least we should not out-Shylock the Shylock in doing justice or fixing the quantum of compensation. However, in the present case compensation is calculated on the basis of longevity or span of life. It appears from the judgment that the learned Member has calculated the compensation on the basis that the deceased could have lived upto the age of 65 years. In Jyotsna Dey and Others Vs. State of Assam and Others, , the Supreme Court has observed that the span of life should be taken to be 70 in view of the high rise in life expectancy. Therefore in the case of Rajarambhai also the span of life should have been taken to be 70 years. However even if the compensation is calculated for 25 years then also the deduction of 50 per cent for uncertainty of life or for lump sum payment is wholly uncalled for. In Jyotsna Dey's case (supra) the deduction made on this count, i.e., the compensation is paid at a time and uncertainties of life, was 20 per cent only. Even if the deduction in the present case is made at 25 per cent then also the compensation payable will come to Rs. 2,25,000/-. The compensation awarded by the learned Member of the Tribunal is only Rs. 90,000/-. Therefore the claimants will be entitled to an additional compensation of Rs. 1,35,000/-. However, since the claim in the cross-objections is restricted to Rs. 1 lakh only, we allow the cross-objections to that extent and grant additional compensation of Rs. 1 lakh over and above what is already granted by the Tribunal. Since the claim in the cross-objections is restricted to Rs. 1 lakh only it is not necessary to consider the claim made by the claimants in the cross-objections on other counts.

7. So far as the rate of interest is concerned, the learned Member of the Tribunal has granted interest at the rate of 6 per cent per annum. The recent trend of the Supreme Court appears to be to grant interest at the rate of 12 per cent per annum. [See Jyotsna Dey and Others Vs. State of Assam and Others, and Jagbir Singh and Others Vs. General Manager Punjab Roadways and Others,]. Therefore the rate of interest granted by the Tribunal is also enhanced to 12 per cent per annum on the whole amount, i.e., which includes Rs. 1 lakh now granted in this appeal, obviously from the date of application till its realisation.

8. In the result, the appeal is dismissed with costs. Cross-objections are partly allowed, viz., to the extent of Rs. 1 lakh and rate of interest. Since we have granted costs in appeal, there will be no order as to costs in the cross-objections. Maharashtra State Road Transport Corpn. is granted three months' time to deposit the amount in the trial court. The trial court is also directed to pass appropriate consequential orders for distribution of the additional amount amongst the claimants and its investment etc. in tune with the guidelines laid down by this court in Nav Bharat Builders and another Vs. Pyarabai and others, . It is needless to say that such an order will have to be passed after giving an opportunity of being heard to the claimants.