(2003) 12 BOM CK 0067

In the Bombay High Court

Case No : First Appeal No. 166 of 1993

Maharashtra State Road Transport Corporation and Others — APPELLANT

Vs

Manda Deshmukh and Others — RESPONDENT

Date of Decision : 11-12-2003

Acts Referred:
Motor Vehicles Act, 1988 — Section 168

Citation : (2004) 2 ACC 863 : (2004) ACJ 1602 : (2004) 2 ALLMR 401 : (2004) 2 MhLj 657

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : V.G. Wankhede, for the Appellant; S.V. Sohani, For Respondent Nos. 1 to 5 and D.N. Kukday, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharcje, J.—This appeal is directed against the Award dated 30-11-1992 passed by the Motor Accident Claims Tribunal in Claim Petition No. 30 of 1990 granting compensation of Rs. 1,62,000/- with interest at the rate of 12% per annum from the date of the petition till realisation in favour of respondents/ claimants 1 to 5.

2. Brief facts are as under:

The accident occurred on 19-10-1989 at about 7-10 p.m. on Akot Akola road near Vallabhnagar. The deceased by name Laxmanrao Namdeorao Deshmukh was travelling in the S.T. Bus bearing No. MWY 9729 and he was going to Akot. When the S.T. Bus reached near the spot of accident, the truck, bearing No. MTV 2682 came from the opposite direction and there was a head-on collision between these two vehicles, as a result of which Laxman and others succumbed to the injuries sustained by them in the accident. The respondents No. 1 to 5 are the legal representatives of the deceased. They had filed claim petition against the owner, driver and Insurer of the truck as well as against the appellants, who are the owners of the S.T. bus involved in the accident.

3. The Tribunal on considering the evidence recorded findings that the accident occurred due to rash and negligent driving of both the drivers of the vehicles involved in the accident. The Tribunal assessed the liability in the ratio of 50 : 50 and granted compensation accordingly holding them liable to pay the compensation jointly and severally. This Award is under challenge in this Appeal.

4. Mr. Wankhede, learned counsel, for the appellants contended that the Tribunal has committed an error in coming to the conclusion that the accident occurred due to negligence of the driver of the ST. Bus. He contended that this is not a case of composite negligence and, therefore, the Tribunal ought to have exonerated the appellants from the liability to pay compensation. He contended that the Tribunal has wrongly assessed the damages and granted exorbitant compensation which deserves to be reduced by applying the multiplier of 18 years because the age of the deceased was 37 years only and he was drawing the wages of Rs. 25/- per day, i.e. 750/- per month. He contended that in such circumstances the Award of the Tribunal cannot be sustained in law.

5. Mr. Sohani, learned counsel 1 to 5 contended that the Tribunal was perfectly justified in coming to the conclusion that this is a case of composite negligence because there was a head-on collision between the two vehicles, i.e. S.T. bus going from North to South direction whereas the Truck was going from South to North direction. He contended that the Tribunal was perfectly justified in computing the damages by applying the multiplier of 25. He contended that the Tribunal correctly assessed the loss of dependency at Rs. 1,80,000/- and after deduction of 10% on account of uncertainties in life awarded total compensation of Rs. 01,62,000/- and there is no reason for interference into the findings recorded by the Tribunal.

6. I have given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is not disputed that the accident occurred on 19-10-1989 at about 7-10 p.m. It is also not in dispute that the ST. Bus involved in the accident was coming from North side and was proceeding towards the South direction whereas the truck involved in the accident was proceeding from South to North direction and there was a head-on collision between these two vehicles. The spot panchanama would clearly reveal that the breadth of the tar road was about 19 ft. and there was a Kutcha road of 6 ft. on either side of the road. The stationary position of both the vehicles soon after the accident is shown in the said panchanama and it would reveal that there was a head-on collision between these two vehicles. It is common knowledge that both the vehicles involved in the accident are heavy vehicles. It is quite obvious that both the drivers were rash and negligent in driving their vehicles. The road was wide enough to accommodate both the vehicles and if the drivers would have exercised proper care and skill the accident could have been averted. In such circumstances, this Court is of the considered view that the Tribunal was perfectly justified in coming to the conclusion that this is a case of composite

negligence and, therefore, the appellants who are the owners of the S.T. bus would be jointly and severally liable to pay 50% of the amount of compensation.

7. So far as the quantum of compensation is concerned, I am usefully refer the three Judges Bench decision of Supreme Court in the case of U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, wherein it has been observed in para No. 18 that "we must at once point out that the calculation of compensation and the amount worked out in Schedule suffer from several defects. For example in item No. 1 for a victim aged 15 years, the multiplier is shown to be 15 years and the multiplicand is shown to be Rs. 3,000/-. The total should be Rs. 3000/- x 15 = Rs. 45,000/- but the same is worked out at Rs. 60,000/-. Similarly, in the second item the multiplier is 16 and the annual income is Rs. 9,000/-; the total should have been Rs. 1,44,000/- but is shown to be Rs. 1,71,000/-. To put it briefly, the Table abounds in such mistakes. Neither the Tribunals nor the Courts can go by the ready reckoner. It can only be used as a guide. Besides, the selection of multiplier cannot in all cases be solely dependent on the age of the deceased. For example, if the deceased, a bachelor, dies at the age of 45 and his dependants are his parents, age of the parents would also be relevant in the choice of multiplier. But these mistakes are limited to actual calculations only and not in respect of other items. What we propose to emphasise is that the multiplier cannot exceed 19 years'' purchase factor. This is the improvement over the earlier position that ordinarily it should not exceed 16. We thought it necessary to state the correct legal position as Courts and Tribunals are using higher multiplier as in the present case where the Tribunal used the multiplier of 24 which the High Court raised to 24, thereby showing lack of awareness of the background of the multiplier system in Davies'' case."

8. The aforesaid ratio can be made applicable to the facts and circumstances of the present case and though it appears that the Tribunal has committed an error in choosing the multiplier of 25, there is no need to modify the Award. The Tribunal had chosen the multiplier of 25 and assessed the loss of dependency at Rs. 1,80,000/- and after deducting 10% on account of uncertainties of life, awarded compensation of Rs. 1,62,000/-. This Court had indicated above that the Award need not be modified and therefore, I am not inclined to interfere with the amount awarded since in the opinion of this Court though the multiplier used is excessive, the multiplicand is used correctly. The Tribunal did not award any compensation on account of loss of consortium, mental agony and sufferings as well as on account of loss to the estate as well as funeral expenses. If this Court were to correct the amount of compensation that would work out to near about the same figure and, therefore, in such circumstances, this Court is disinclined to interfere with the figure of compensation. This Court, therefore, holds that the Tribunal has committed an error in choosing the multiplier and allows the appeal to that extent only. Therefore, the appeal is allowed in the aforesaid terms with no order as to costs.

