
(2013) 07 BOM CK 0231
In the Bombay High Court
Case No : First Appeal No. 454 of 2007

National Insurance Co. Ltd.	Vs	APPELLANT
Smt. Nanubai, Shekhar and Abdul Rauf		RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2014) 1 ABR 105 : (2013) 6 ALLMR 133 : (2014) 5 BomCR 430 : (2014) 1 MhLj 250

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

Bench : Single Bench

Advocate : S.P. Deshpande, for the Appellant; Asghar Hussain, Advocate for Respondent Nos. 1 and 2 and None, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—The present first appeal is directed against the judgment and order dated 21/11/2003 passed in Motor Accident Claim Petition No. 292 of 1998 by learned Member, Motor Accident Claims Tribunal, Nagpur whereby petitioner-claimants were entitled for compensation of Rs. 3,29,650/- with interest at the rate of 9% per annum from the date of petition. Facts briefly stated are as under

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One Lomeshwar Tamgadge, the husband of Smt. Nanubai Tamgadge (claimant No. 1) and father of Shekhar Tamgadge (claimant No. 2) was serving as conductor in Maharashtra State Road Transport Corporation and was residing at Nagpur. On 21/12/1997 at about 8.45 p.m. when he was standing near the house of one Kailash Jiwanekar by the road side, one Tempo Trax (offending vehicle) bearing No. MP-22/B-4957 dashed him, which driven rashly and negligently. In the result, he suffered from serious injuries to which he was succumbed. The learned Tribunal held that Tempo Trax bearing No. MP-22/B-4957 caused the accident by rash and negligent driving thereof which resulted in serious fatal injuries to deceased Lomeshwar.

2. It appears that the Tribunal went through F.I.R. and other documentary evidence on record as also defence of the insurer and found that the driver of the Tempo Trax was not holding valid driving licence. According to learned Member of the Tribunal, the insurer as well as driver/owner of the offending vehicle cannot avoid their liability, as it was found that the ignition key was left with the vehicle and that is why Kamlesh Bawre could drive that vehicle, which resulted into accident. Thus, inference was raised that Kamlesh Bawre driver of the vehicle was driving the said vehicle with the consent of the regular driver/owner. Under these circumstances, considering the vicarious liability of the owner/driver for rash and negligent driving of the Tempo Trax, the Tribunal held that owner as well as insurer jointly and severally liable to pay compensation to the dependents of the victim.

3. The Tribunal considered the monthly income of the deceased as also permissible deduction towards his personal expenses from the annual income of the deceased and 2/3rd income multiplied by 8 was taken as basis for compensation along with loss of consortium, loss of love and affection, loss of contribution to the estate and conventional damages i.e. the expenditure incurred for funeral and ambulance. Thus, the total compensation awarded to the claimants in the sum of Rs. 3,29,650/-.

4. The award is sought to be challenged by the insurer on the ground that the driver of the Tempo Trax was not holding valid driving licence and, therefore, insurer is not liable to pay compensation. The quantum of compensation is also challenged on the ground that appropriate multiplier was not applied.

5. Learned Advocate for the respondent Nos. 1 and 2 opposed the appeal by relying on the judgment in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . In the concluding paras, the Hon''ble Supreme Court made it clear that the Motor Vehicles Act 1988 provided for compulsory insurance of vehicle against third party risk. It is contended that it is a Social Welfare Legislation to extend relief of compensation to victim of accident caused by use of motor vehicles. Learned Advocate for appellant also submitted that there was a breach of policy condition must be proved by the insurer if insurer wants to avoid liability towards the insured.

6. According to learned Advocate for respondent Nos. 1 and 2, the insurer (appellant) ought to have proved that the insured was guilty of negligence and failed to exercise reasonable and proper care in the matter of fulfilling the conditions of insurance policy. However, in the case in hand it is contended that no evidence was led by the appellant to prove that there was negligence on the part of owner of the offending vehicle. Thus, it is contended that in the absence of evidence led by the insurer, the insurer (appellant) cannot be allowed to avoid liability towards the dependents of the deceased Lomeshwar. Learned Advocate for the respondent Nos. 1 and 2, therefore, in support of impugned judgment and award submitted that the claimants had succeeded to establish the fact that offending motor vehicle was driving rashly and negligently, which caused death

of Lomeshwar on the day of accident.

7. I have considered the summary of findings recorded by the Apex Court in National Insurance Co. Ltd. v. Swaran Singh and others" case. It is true that where breach of insurance policy or its condition is alleged, it is obligatory upon the insurance company to prove breach of condition of the policy and to establish that the breach was with the knowledge of owner of the offending vehicle. One cannot overlook the fact that the Motor Vehicles Act, 1988 is a social welfare legislation and, therefore, provisions of law contained in the Act are required to be interpreted so as to award just and proper compensation to the dependents of the victim. Once it is established that there was accident by use of offending vehicle, which was insured for damage/injury i.e. death or grievous injuries to third party, the insurance company is liable to pay just and reasonable compensation to the dependents of the victim. Therefore, considering the evidence on record, I do not find that there was any plea on the part of insurance company to absolve it from liability to make payment of compensation to the dependents of the victim on the ground that there was breach of condition of the insurance policy so as to claim exclusion from liability. Considering onus of proof upon the insurer, which was not discharged in the present case, no fault can be found with the impugned judgment and award for the aforesaid reasons.

8. The next contention of the appellant is that appropriate multiplier was not adopted while calculating the compensation. The learned Advocate for the appellant contended that the quantum of compensation as awarded by the Tribunal is disproportionate. Looking to the computation of compensation, it appears that the Tribunal had deducted 1/3rd amount towards self or personal expenses to be incurred by the deceased and the balance of remaining amount was multiplied. Considering the multiplier 8 applied by the Tribunal and looking to the age of the victim as also the age of both the dependents-claimants, I think it was appropriate multiplier used. The deceased in the case in hand was aged about 56 years at the time of accident. He was gainfully employed as conductor and claimants are respectively widow and son of Lomeshwar aged about 50 years and 21 years at the time of accident. The multiplier selected by the Tribunal in the facts and circumstances of the case was reasonable and proper.

9. Looking to the ruling in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier applied in the present case by considering ages of the dependents as well as age of the deceased when accident occurred and balancing the same appears to be just and reasonable mode to determine compensation. The calculations made by the learned Tribunal and damages awarded for conventional heads like loss of consortium, loss of love and affection, loss of contribution to the estate and the expenses incurred towards funeral expenses and ambulance charges are reasonable. Even according to Sarla Varma's ruling, when deceased in the age group of 51 to 55, the multiplier to be used is 11. However, it is to be borne in mind the imponderables which may enter into calculation such as prospective illness, disability, likely

unemployment, likelihood of premature death, pecuniary advantages and expected life span of the deceased, dependents becoming independent earning member after some years, possibility of premature demise of dependents, etc. the multiplier selected by the Tribunal as 8 is neither excessive, nor low so as to furnish the ground for interference by this Court. Since it is found that the compensation awarded by the Tribunal is just, proper and reasonable, no ground is made out for interference in the impugned judgment and award. In the result, the appeal is dismissed with no order as to costs.