

(2019) 06 BOM CK 0064
In the Bombay High Court
Case No : First Appeal No. 533 Of 2014

National Insurance Company Ltd	Vs	APPELLANT
Mansi Swapnil Deokar And Ors		RESPONDENT

Date of Decision : 20-06-2019

Acts Referred:

Citation : (2019) 06 BOM CK 0064

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : Shashikant Borkar, V. D. Awchat

Final Decision : Partly Allowed

Judgement

M.G. Giratkar, J

1. The present appeal is against the judgment and order passed by the Motor Accident Claims Tribunal, Nagpur, in Motor Accident Claim Petition No. 422 of 2004, decided on 06-12-2012. Deceased Swapnil Chandrakant Deokar went to Bhadrawati by his Hero Honda Street Smart Deluxe motorbike No.Mh-29/E-7223. On 31-07-2004, while returning from Bhadrawati to Wani by the said motorcycle, when he reached near village Sawali, at about 8.00 pm, in the pitch dark, one truck bearing registration No. MHG-6477 was standing in a stationary condition without showing any parking lights or surrounding stones or branches of trees or left any indication regarding the stoppage of truck on the road. Deceased could not see the offending truck and dashed his vehicle to the said truck. The deceased died on the spot due to the accident.

2. Police investigated the crime. First Information Report (FIR) was registered and prepared spot panchanama etc. The legal heirs of deceased Swapnil claimed compensation of Rs. 51,00,000/- against the owner of truck and the Insurance Company.

3. The learned Claims Tribunal recorded the evidence of the claimants. None

appeared from the owner and driver of the truck. Respondent- Insurance Company appeared and filed written statement, denied their liability to pay amount of compensation. It is the contention of the Insurance Company that the deceased was also negligent for the accident and therefore, there was contributory negligence on the part of the deceased. Hence, the Insurance Company, at the most, liable to pay 50% of the amount of compensation.

4. After framing issues, the claimants entered into the witness box, proved material documents i.e. F.I.R., spot panchanama etc. The respondent -Insurance Company not examined any person and closed the case. The learned Principal Judge, Motor Accident Claims Tribunal, Yavatmal, taken into consideration the salary certificate (Exhibit-46). The salary of the deceased was Rs. 10,715/- per month. The deceased was aged about 33 ½ years. As per the decision of the Hon'ble Apex Court in the case of Smt. Sarla Verma and others vs Delhi Transport Corporation and another, reported at (2009) 6 SCC 121, 50% future prospects was taken into consideration and looking to the dependency ¼ th amount is deducted after calculating the amount of compensation. Tribunal granted compensation of Rs. 24,85,000/- inclusive of 'No Fault Liability' along with interest at the rate of 9% from the date of petition till the realization of whole amount.

Being aggrieved by the judgment of the MACT, Yavatmal, the present appeal is filed.

5. Heard learned Counsel Shri Shashikant Borkar for the appellant. He has pointed out the spot panchanama (Exhibit-30) and submitted that the deceased dashed the stationary vehicle from the right side, therefore, it is clear that the deceased was in a high speed and could not control and dash to the stationary vehicle. Therefore, there was 50% contributory negligence on the part of the deceased. The Insurance Company along with the owner are only liable to pay 50% amount of compensation as awarded by the Tribunal.

6. Heard learned Advocate Shri Awachat for respondent nos. 1 to 4. He has pointed out the judgment of Apex Court in the case of Archit Saini and another vs Oriental Insurance Company Ltd and others, reported in 2018(6) Mh.L.J.,19. Their Lordships of the Hon'ble Apex Court have held as under :-

"The approach of the High Court in reversing the conclusion arrived at by the Tribunal on Issue I has been very casual, if not cryptic and perverse. Indeed, the appeal before the High Court is required to be decided on fact and law. That, however, would not permit the High Court to causally overturn the finding of fact recorded by the Tribunal. As is evident from the analysis done by the Tribunal, it is a well-considered opinion and a plausible view. The High Court has not adverted to any specific reason as to why the view taken by the Tribunal was incorrect or not supported by the evidence on record. It is well settled that the nature of proof required in cases concerning accident claims is qualitatively different from the one in criminal cases, which must be beyond any reasonable

doubts. The Tribunal applied the correct test in the analysis of the evidence before it. Notably, the High Court has not doubted the evidence of PW7 as being unreliable nor has it discarded his version that the driver of the case could not spot the parked Gas Tanker due to the flashlights of the on coming traffic from the front side. The approach of the High Court in reversing the well- considered finding recoded by the Tribunal on the material fact, which was supported by the evidence on record, cannot be countenanced."

7. In the present case, the claimants have proved the FIR, spot panchanama etc. Those documents are not denied by the Insurance Company. As per the FIR and spot panchanama, the deceased was returning from Bhadrawati to Wani. When he reached near the spot of incident at about 8.00 pm, due to darkness, he could not see the stationary vehicle parked on the road. There is no dispute that the said stationary vehicle was not having any parking lights or any indicator. It is a matter of commonsense that any person passing on the road cannot identify/see the stationary vehicle which is parked without any indicator or parking lights etc.

8. The Hon'ble Apex Court in the above cited judgment has held that when the stationary vehicle is parked without any indicator or parking lights on road, it cannot be said that there was contributory negligence on the part of the deceased. In view of the above cited judgment which is similar to the facts of the present case, it cannot be said that the deceased was negligent while driving his vehicle. The learned Tribunal has rightly relied on the evidence adduced by the claimants. The Insurance Company not adduced any evidence to show that the deceased was also negligent to cause the accident. The learned Tribunal has rightly granted compensation.

9. Learned Advocate Shri Borkar for the appellant has submitted that the lower Court has wrongly multiplied by 17, as per the judgment in the case of Smt. Sarla Verma and others (supra), in paragraph 42, the multiplier should be 16 and not 17, because the deceased was aged about 33 ½ years at the time of accident. Therefore, multiplier 16 be taken into consideration.

10. As per the judgment of the Hon'ble Apex Court in the case of Smt. Sarla Verma and others (supra), in paragraph 42, multiplier 16 is taken into consideration the amount of compensation is as under :

As per the monthly salary

Rs. 10,715/-

Future prospects

+ 50%

= Rs.16,072/-

x 12

= Rs.1,92,864/- after deducting 1/4th amount of Rs. 48,216/- it comes to

Rs. 1,44,648/-

x 16

= Rs.23,14,368/-

Funeral expenses +

Rs. 70,000/-(as per the judgment in the case of National Insurance Company Limited vs Pranay Sethi and others) = Rs.23,84,368/-

11. The claimants/respondent nos. 1 to 4 are entitled for compensation of Rs. 23,84,368/-. In that view of the matter, the appeal is partly allowed. The impugned judgment is maintained. However, it is modified as under :-

(a) The non-applicant nos. 1 and 2 (appellant Insurance Company and owner respondent no. 6) shall jointly and severally pay the amount of compensation of Rs. 23,84,368/- instead of Rs. 24,85,000/-.

(b) Order of interest etc. is maintained as it is.

(c) The amount of Rs.44,56,450/- deposited before this Court by appellant. The claimants/respondent nos. 1 to 4 are entitled to withdraw the amount of Rs. 23,84,368/- long with interest at the rate of 9% from the date of petition till deposit of the amount along with accrued interest on the fixed deposit.

(d) The balance amount be refunded to the appellant along with accrued interest.

12. R and P be sent back to the M.A.C.T., Nagpur.