(2017) 01 BOM CK 0155

In the Bombay High Court

Case No : 23 of 2005

NEW INDIA ASSURANCE COMPANY LTD — APPELLANT

Vs

SHARDABEN & ORS — RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Motor Vehicles Act, 1988, Section 173, Section 173, Section 166, Section 166 - Appeals - Application for compensation

Citation : (2017) 01 BOM CK 0155

Hon'ble Judges : A S Chandurkar

Bench : SINGLE BENCH

Advocate : A J Pophaly, M D Samel, Mehadia

Final Decision : Allowed

Judgement

1. By the present appeal filed under Section 173 of the Motor Vehicles Act, 1988 [for short "the said Act"], the insurer challenges the award passed by the Motor Accident Claims Tribunal, Amravati.

2. On 21st May, 1996, the husband of the respondent no.1 was travelling by a State Transport bus which was dashed by a truck insured with the appellant. The husband of the respondent no.1, aged about 65 years, succumbed to his injuries. In the Claim Petition filed under Section 166 of the said Act, amount of Rs.2,65,000-00 as compensation was awarded.

3. Shri A.J. Pophaly, learned counsel for the appellant, submitted that the income of the deceased was not Rs. 6,000/- per month, as calculated by the Tribunal. He submitted that the documents on record indicated monthly income to be Rs.3,000-00. It was then submitted that as there was a head on collision between the State Transport bus and the truck, the entire fault was not that of the truck driver and the aspect of contributory negligence had not been adverted to. The liability, therefore, ought to have been divided.

4. Shri M.D. Samel, learned counsel for the respondent no.1, supported the impugned judgment. According to him, after considering the entire evidence on record, appropriate compensation had been awarded. He submitted that the deceased was getting income from two firms and hence figure of Rs. 6,000/- per month was reasonable. Shri Mehadia, learned counsel for the respondent no.5, also supported the impugned judgment.

5. With the assistance of learned counsel for the parties, I have perused the records and I have given due consideration to their respective submissions.

6. The following point arises for determination:- Whether the award, as passed by the Claims Tribunal, deserves to be interfered with?

7. To prove the income of the deceased, the claimant ? respondent no.1 examined herself at Exh.42, in which she stated that the monthly income of her husband was Rs. 6,000-00. He had formed a Partnership Firm from which he was receiving income. The daughterin- law of the respondent no.1, examined at Exh.52, also supported the version of the respondent no.1. The Income Tax Practitioner, who was looking after the accounts of the deceased, was examined at Exh.68. He referred to the Income Tax Return of the deceased for the year ending 31st March, 1996. As mentioned therein, he referred to the income of Rs.3,000-00 per month.

8. Perusal of aforesaid evidence indicates that the Income Tax Returns at Exhs.69 to 71 were placed on record which indicated that the deceased was doing work of the industry as well as was a partner in a firm. Considering the version of these witnesses and the documents on record, the income of the deceased can be taken to be Rs.5,000/- per month and not Rs.6,000/- per month, as adjudicated. This amount appears reasonable considering the income tax returns of the deceased and version of the Income Tax practitioner that the income was Rs. 3,000-00 per month. The deceased was 65 years of age and after deducting half the amount towards personal expenses, as the respondent no.1 was the only dependent, the loss of dependency would be Rs.2,500-00 per month. The annual loss of dependency would, therefore, be Rs.30,000-00. The multiplier of five has been rightly taken by the Claims Tribunal considering the age of the deceased. Hence, total loss of dependency would come to Rs.1,50,000-00. Besides this, the Tribunal has awarded a sum of Rs.25,000-00 for loss of consortium and funeral charges. This adjudication is not challenged by the claimants and hence those amounts cannot be increased in the appeal preferred by the Insurance Company.

9. As regards the aspect of contributory negligence, the copy of the Spot Panchanama at Exh.45 indicates that after colliding with the bus, the truck travelled for almost seventy-five feet. Hence, the finding recorded that negligence was that of the truck driver appears to be reasonable. The point, as framed, is answered accordingly by holding that the claimant would entitled for a total compensation of Rs.1,75,000-00 [rupees one lakh seventy-five thousand

only] along with interest at the rate of nine per cent per annum as awarded by the Tribunal.

10. As a result of aforesaid discussion, the following order is passed:- ORDER [a] Judgment dated 8th September, 2004 in Claim Petition No. 288 of 1996 is partly modified. It is held that the claimant is entitled for compensation of Rs.1,75,000-00 [rupees one lakh seventy-five thousand only], including No-fault-Liability with interest at the rate of nine per cent per annum from the date of filing of the petition till realization.

[b] The appellant would be liable to satisfy the claim.

[c] The Claims Tribunal shall calculate total amount of compensation to which the respondent no.1 is entitled, and pay her the balance amount, if any, with accrued interest. The remaining amount shall be returned to the appellant along with accrued interest. The same be done within a period of three months from today.

11. First Appeal is partly allowed in aforesaid terms. No costs.