

(1984) 11 BOM CK 0065
In the Bombay High Court

Oriental Fire and General Insurance Co. Ltd.	APPELLANT
Vs	
Suman Navnath Rajguru and Others	RESPONDENT

Date of Decision : 17-11-1984

Acts Referred:

Citation : (1986) 1 ACC 372

Hon'ble Judges : V.V. Vaze, J;C.S. Dharmadhikari, J

Bench : Division Bench

Judgement

V.V. Vaze, J.—Navnath Ambadas Rajguru a young man of 21 was engaged in the business of manufacturing footwear. On 27-5-1979 Navnath was walking to his residence along Sion-Trombay road from west to east When he reached Bharat Petroleum's petrol pump a tanker bearing registration No. MHT-4431, which was parked near the footpath, burst and exploded as a result of which Navnath was thrown up and sustained serious injuries. Navnath later on succumbed to his injuries and his wife Suman, father Ambadas and mother Laxmibai filed a claim application No. 2016 of 1979 before the II Additional Motor Accident Claims Tribunal for Greater Bombay which awarded a sum of Rs. 47,175-00 as compensation against which the present appeal has been filed by the Insurance Company.

2. On behalf of the company it is urged firstly that the insurance policy only covers liability which may be incurred by the owner in respect of death or fatal injury to a third party "caused by arising out of a use of the vehicle in a public place." It is urged that the vehicle during the material time was not "in use" muchless in a public place and as the accident did not occur when the vehicle was in a state of locomotion but allegedly due to bursting of the inflammable petrol the company is not liable.

3. We do not see much force in this contention of the learned Counsel for the insurance company, because according to the evidence of Barikrao Rajguru a nephew of the deceased, who visited the spot of accident, the green coloured tanker was standing near the footpath on the road and not in any garage and the

dead body of Navnath was found at a distance of about 10 feet from the tanker. In a case, when the car was parked on a road with its battery removed, it was held in *Elliott v. Grey* 1959 (3) A.E.R. 733 that the owner of the vehicle had "use" of it on the road notwithstanding the fact that the vehicle could not be driven as such for want of a battery. Similar view has been taken by the Delhi High Court in *Pushpa Rani Chopra and Ors. v. Anokha Singh and Ors.* 1975 ACJ 396.

4. As regards the question of negligence, it need not be emphasised that an oil tanker normally does not have tendency to burst into flames and if such a situation occurs under the principles of *Res Ipsa Loquitur*, the owner of the vehicle will be prima-facie guilty of negligence. The poor and innocent cobbler who was moving by the side of the parked vehicle on the road had no reason to suspect that there is any lurking danger in a parked tanker, nor is there any suggestion of arson by the claimant.

5. Coming to the quantum of damages the learned Counsel for the appellant used the admission of the father of the deceased as the peg on which to hung an argument that the deceased could not have remitted home more than Rs. 350/- in four to six months. No doubt the illiterate Ambadas, father of the deceased, has stated in the cross-examination that his son used to send money at the intervals of about four to six months, sometimes he used to send Rs. 300/- and sometimes Rs. 350/-. But this will have to be read in the context of his earlier statement that Navnath was earning about Rs. 600/- to Rs. 650/- per month and send Rs. 300/- to Rs. 350/- per month to his father for household expenses. Even Balasaheb Golmukhe who has a footwear shop at Dadar speaks of the deceased Navnath as a contractor who used to supply chappals Balasaheb shop at Dadar. According to Balasaheb, Navnath must be earning about Rs. 500/- per month. Under these circumstances considering the fact that Navnath was not a mere labourer but an artisan, the figure of Rs. 150/- per month taken as the dependency for a period of 20 years does not appear to be on the higher side.

6. As the widow Suman was about 19 at the time of the accident there was a reasonable expectation of her re-marriage and the learned Counsel for the claimant has agreed that a deduction of Rs. 2,175/- from the total amount of compensation will meet the ends of justice.

7. The appeal is partly allowed and for the figure of Rs. 47,175/- appearing in the second line of the order of the Tribunal the figure of Rs. 45,000/- is substituted. Rest of the order is confirmed. Under these circumstances the parties shall bear their own costs in this Court. The amount shall be divided in equal proportion between three applicants and after the deposit is made, the Tribunal shall pass appropriate orders in consonance with the guidelines laid down in *Nav Bharat Builders and another Vs. Pyarabai and others*, after giving an opportunity to the claimants of being heard.