
(2011) 05 BOM CK 0077
In the Bombay High Court
Case No : First Appeal No. 259 of 2005

Oriental Insurance Co. Ltd.	Vs	APPELLANT
Smt. Sudha Nilu Gaude and Others		RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Citation : (2011) 4 TAC 535

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : E. Afonso, for the Appellant; D. Pangam, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble F.M. Reis, J.—The above appeal filed by the Insurance Company challenges the judgment and award passed by the Motor Accidents Claims Tribunal dated 19th March, 2005 in claim petition No. 32/1997.

2. The parties shall be referred to in the manner they so appear in the cause title of the impugned judgment.

3. The claimants who are respondents Nos. 1 to 3 filed the claim petition for compensation in view of an accident which occurred on 2nd January, 1997 at about 17.45 hours, wherein Sandeep Nilu Gaude Gaonkar expired on account of an accident while travelling in a mini bus bearing No. GA-01-V-0305, which was driven by the respondent No. 1, Shailesh (respondent No. 4, herein) and owned by the respondent No. 3, Vamanrao (respondent No. 6, herein). The respondent No. 2 is a driver of the tanker (respondent No. 5, herein) and the respondent No. 4 Satyawar is the owner of the tanker, (respondent No. 7, herein). The respondent No. 5 (appellant, herein) is the Insurance Company who had ensured the said mini bus and the respondent No. 6 (the respondent No. 8, herein) is the Insurance Company which insured the tanker.

4. The claim petition was filed by the said claimants claiming an amount of Rs. 4

lacs towards compensation in view of the death of the said deceased. By the judgment and award dated 19th March, 2005, the learned Presiding Officer of the Claims Tribunal at Panaji awarded compensation of Rs. 1,90,000/- alongwith interest accrued thereon at the rate of 6% per annum to be paid by the appellant and respondents Nos. 1 and 3, jointly and severally. Being aggrieved by the said judgment, the appellant has preferred the present appeal.

5. Shri Afonso, the learned Counsel appearing for the appellant has assailed the impugned judgment essentially on one ground as the amount of compensation awarded by the Tribunal is not disputed by the appellant. The only contention sought to be canvassed by the learned Counsel appearing for the appellant is that on the basis of the evidence on record, it clearly establishes that there was composite negligence on the part of the driver of the minibus and the driver of the tanker. The learned Counsel has submitted that the Tribunal has failed to consider the said aspect and, as such, erroneously came to the conclusion that the amount of compensation is to be paid by the appellant and respondents Nos. 1 & 3, herein. The learned Counsel further submitted that there were other victims who had filed such claims for compensation and that composite negligence agreed by both the insurance companies before the Lok Adalat i.e. appellant and respondent No. 6 was to the extent of 50%. The learned Counsel has taken me through the sketch as well as the evidence of CW2 and pointed out that the evidence on record discloses that the accident occurred at the place where the tanker was coming down the slope and the mini bus was ascending the slope on a straight road. The learned Counsel has taken me through the sketch prepared by the police at the site of the accident and pointed out that on the basis of the positions of the vehicles it clearly discloses that there is composite negligence on the part of the driver of the tanker which resulted in such accident. The learned Counsel, as such, submitted that the impugned judgment deserves to be quashed and set aside.

6. On the other hand, Shri Pangam, the learned Counsel appearing for the claimants has supported the impugned judgment. As far as the contentions of the appellant are concerned, he submitted that he has to stand by the statement of his witness who is CW2 and there is no other evidence adduced by any of the parties to the contrary. The learned Counsel has further submitted that as far as the claimants are concerned they are not aware as to the manner in which the accident occurred, but however it is to be noted that the drivers of the respective vehicles have not entered the witness box. None appeared for respondent No. 6, (Respondent No. 8 herein) United Insurance Co. Ltd., though served in the present proceedings. The remaining Respondents though served failed to remain present at the time of the hearing of the appeal.

7. Having heard the learned Counsel and on perusal of the record, the following point for determination arises in the present appeal;

POINT FOR DETERMINATION

Whether there was composite negligence on the part of respondent No. 2 which resulted in the accident.

8. The amount awarded by the Tribunal by the impugned judgment has not been disputed nor any argument advanced to contend that such amount deserves to be modified. As such, the findings of the Tribunal determining the amount of compensation by the impugned judgment stands confirmed.

9. The only point to be considered is whether the accident occurred solely on account of the negligence on the part of respondent No. 1. On perusal of the evidence of CW2, I find that he has stated that he was driving the rickshaw at the relevant time and he found that the tanker which was driven by respondent No. 2 was overtaking a stationary fiat vehicle and in the process dashed against the mini bus which resulted in the accident. The Tribunal while passing the impugned judgment has not accepted the version of the said witness only on the basis of the sketch produced by the claimants. On perusal of the said sketch, I find that the tanker is found parked at a distance of about 73 metres from the point of impact with the mini bus. The mini bus is found tilted to nearly 180 degree at the site of the accident. The front right wheel of the mini bus is found dislodged and found more or less in the middle of the said road. The road at the site is the straight road, but however the tanker was descending the slope and the mini bus was ascending the slope at the time of such accident. It is well known that normally the vehicle coming up the slope has got a preference to the vehicle which come down the slope. In such circumstances, and considering that at the place of the accident the road was a straight road and substantially wide, Shri Afonso the learned Counsel appearing for the appellant is justified to contend that the accident cannot be said to have occurred solely on account of the rashness and negligence on the part of the respondent No. 1. On the contrary, on perusal of the evidence of CW2 there is no doubt that the accident has occurred on account of composite negligence on the part of the driver of the mini bus and the driver of the tanker. Lack of caution on the part of the driver of the tanker who is respondent No. 2 in taking any steps to avoid such accident itself would result in composite negligence on his part, as the road at the relevant place was substantially broad and it was a straight road. The learned Tribunal was not justified to discard the evidence of CW2 merely on the basis of the sketch produced on record. The evidence discloses that both the drivers of the mini bus and the tanker were jointly responsible for the said accident. As such, the learned Tribunal was not justified to direct the payment of the compensation by the appellant and respondent Nos. 1 & 3. On the contrary, the liability should have been saddled also on the respondent Nos. 2,4 & 6. Considering the submissions of learned Counsel appearing for the appellant that before the Lok Adalat such compensation has been apportioned between the Insurance Company of the tanker and the mini bus at 50% each, and on the basis of the evidence on record which establishes that there was composite negligence on the part of the drivers of both the vehicles, I find that amount of compensation payable to the claimants should be apportioned at 50% each

between respondents Nos. 1, 3 & 5 on one hand and respondent Nos. 2,4 & 6 on the other hand. As such, respondent Nos. 1, 3 & 5 would be jointly and severally liable to pay 50% of the compensation awarded by the Tribunal and the remaining 50% would have to be paid jointly and severally by respondents Nos. 2,4 & 6 together with interest thereon as awarded by the learned Tribunal in the impugned judgment.

10. The point for determination is answered accordingly.

11. In view of the above, I pass the following order.

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and award dated 19th March, 2005 is modified and the respondents Nos. 1,3 & 5 are directed to pay jointly and severally 50% of the compensation awarded by the Tribunal together with interest thereon and the respondents Nos. 2, 4 & 6 are directed to pay jointly and severally the remaining 50% of compensation together with interest thereon to the claimant.

(iii) The appeal stands disposed off accordingly with no order as to costs.