

(2009) 11 BOM CK 0048
In the Bombay High Court
Case No : First Appeal No. 303 of 1998

Prashant Deshmukh and Vinayak @ Vitthal Ganeshrao Deshmukh APPELLANT

Vs

Hariprakashsingh, Munnidevi and New India Assurance Co. Ltd. RESPONDENT

Date of Decision : 21-11-2009

Acts Referred:

Motor Vehicles Act, 1988 — Section 140
Penal Code, 1860 (IPC) — Section 279, 304A, 337, 338

Citation : (2011) ACJ 594 : (2010) 1 ALLMR 768 : (2010) 4 BomCR 408 :
(2010) 1 MhLj 968

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

Bench : Single Bench

Advocate : U.J. Deshpande, holding for A.S. Chandurkar, for the Appellant;

Judgement

A.P. Bhangale, J.—This First Appeal is directed against the judgment and award passed in Motor Accident Claim Petition No. 109/1995 on 13.02.1998 by the learned Joint District Judge & Exofficio Additional Member of Motor Accident Claims Tribunal, Akola (hereinafter referred to as "the Tribunal") whereby the claim was partly allowed and appellants herein were held jointly and severally liable and directed to pay sum of Rs. 1,20,000/inclusive of amount of "no fault liability" with interest, at the rate of 12 per cent per annum, from the date of application till its realization.

2. The facts in brief are that: on 23.11.1994 at about 2.00 p.m. Miss Rashmi D/o Hariprakashsingh, aged about 16 years, was going by her bicycle to her College, at Paras, Dist. Akola. While passing through a residential colony at Paras, from the opposite direction, a motorcycle of Hero Honda make, belonging to Vinayak Ganesh Deshmukh and driven by Prashant s/o Vinayak Deshmukh, aged about 16 years, came in high speed driven rashly and negligently and gave a dash to Miss Rashmi who was thrown away and received head injury and other injuries. She was admitted in District Hospital, Akola. Unfortunately, while receiving

treatment, she died on 28.11.1994.

3. Crime was reported to the Police and was registered as Crime No. 260/1994 at Police Station for offence punishable under Sections 279, 337 and 338 of the Indian Penal Code. Spot Panchnama (Exh.39) was drawn.

4. Parents of Rashmi, namely, Hariprakashsingh and Munnidevi lodged their claim by filing MACP No. 109/1995 before the Tribunal against the owner, driver and insurer of the offending motorcycle, claiming compensation. Notices were served accordingly. All of them denied liability to pay compensation.

5. It is not in dispute that the motor cycle bearing Registration No. MH-30 A-7742 owned by Shri Vinayak Deshmukh was validly insured during the period between 16.05.1994 and 15.05.1995. It is also not in dispute that driver of the offending motorcycle was holding Learner's Driving Licence to drive the motorcycle without gears. The Insurer-Company contests it's liability on the plea that the Driver, aged about 16 years had no valid driving licence to drive the motorcycle with gears, but he was allowed to drive the offending motorcycle. The appellants contested the claim on the plea that Prashant was acquitted on merits of charge framed under Sections 279 and 304A of the Indian Penal Code in a Criminal Case lodged against him and, therefore, the Tribunal ought to have considered the finding by the Criminal Court. Furthermore, it is submitted that insurer company did not prove that there was breach of insurance policy. The Tribunal wrongly exonerated the insurer from it's obligation and legal liability to satisfy the claim although insurer had failed to discharge the burden of proof. As to alleged breach of policy, the appellants contested the claim on the plea that Miss Rashmi was negligent while driving bicycle and was solely responsible for her death as she was learning to drive the bicycle. The quantum of compensation awarded by Tribunal was disputed on the ground that award is excessive as contributory negligence of Rashmi was disregarded. It is also contended that death of Rashmi was not the direct result of accident.

6. I have considered the submissions at the Bar. The Tribunal recorded the unchallenged facts that, on 23.11.1994 at about 2.00 p.m. the accident occurred on the road in residential colony out of use of Hero Honda Motorcycle bearing registration No. MH 30 A-7742 driven by Prashant Vinayak @ Vitthal Deshmukh and was validly insured with New India Assurance Company during relevant period. The Tribunal also framed issues as to whether Prashant was rash and negligent in driving offending motor cycle and responsible for causing the accident and further as to whether insurance Company proved breach of policy and about liability to pay and quantum of compensation. The evidence led before the Tribunal consists of claimant - Hariprakashsingh (father of the victim-Rashmi) and documents produced in support of the claim. According to claimant-Hariprakashsingh, he had spent about Rs. 50,000/towards medical expenses / treatment of his daughter-Rashmi before she died while receiving medical treatment at Nagpur. He claimed compensation of Rs. 2,50,000/as also interest and cost. At interim stage, the amount payable in view of Section 140 of the

Motor Vehicles Act, 1988 (in short "the said Act") was received by claimants. The Tribunal found that motorcyclist Prashant was rash and negligent and responsible for causing the accident and his father Vinayak @ Vitthal committed breach of condition of policy and held them liable to pay compensation awarded in the sum of Rs. 1,20,000/inclusive of "no fault liability" and interest @ 12 per cent from the date of application till realization, while exonerating the Insurance Company from liability to pay it.

7. Learned Advocate for appellants submitted that it was the sole and exclusive liability of the insurer-Company to establish the fact that the offending motorcycle was being driven by a person having no valid and effective driving licence and the insurer failed to discharge the burden of proof and therefore, no recovery can be made from the appellants. Number of judgments have been cited to raise a plea that it was for insurer to discharge onus that offending motor vehicle was being driven by the person who had no valid and effective driving license.

8. The legal position appears well settled by now, that the object of the Motor Vehicles Act, 1988 in making the insurance of a motor vehicle compulsory is to enable the claimants who are victims or sufferers on account of accident to recover compensation within reasonable time. The provisions of the Act has made the procedure as simple as possible to enable the claimants to get the award of compensation and to execute it. Therefore, insurer and insured have been made jointly and severally liable to pay compensation to the claimants. The cumbersome and tardy procedure of a Civil Suit and execution of decree thereof has been avoided by providing easier mode of getting the award, executed from the Accident Claims Tribunal by realization of claim. The Act aims at mitigating hardships of claimants to certain extent. Section 140 of the said Act provides for liability without fault in certain cases of motor vehicle accidents in which death or permanent disablement has resulted due to use of motor vehicle. By an application u/s 140 of the said Act, at an interim stage of the proceedings, the principle of "no fault liability" is applied and it is not necessary for claimants to plead and prove that death or permanent disability as the case may be, resulted due to any wrongful act, neglect or default of the owner or driver of the motor vehicle concerned. An attempt must be made to give effect to all provisions of the Act and Rules framed there under.

9. The issue of liability to compensate claimants was considered in detail, by the Hon''ble Apex Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh and Others, . The Hon''ble Supreme Court has, inter alia, held that:

Mere absence, fake or invalid driving licence or disqualification of the Driver at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid it's liability towards insured the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of policy regarding use of vehicles by duly licensed driver or one who was not disqualified

to drive at the relevant time

In another case of National Insurance Company Limited, Bangalore Vs. Smt. H.D. Nagarathnamma and others, , the Division Bench after having considered catena of judicial pronouncements, observed thus:

Merely because in a given case the vehicle was driven by a person holding no license or holding a licence which may be said to be not covering the vehicle, can not be said to amount to breach of conditions, unless an entrustment is established that vehicle has been entrusted by the owner of the vehicle and breach has been a conscious act and a wilful breach.

In view of the above observations and in view of the fact that the insurer in the present case did not discharge the onus to establish that the insured was guilty of wilfully violating policy, the insurer was wrongly exonerated by the Tribunal from the vicarious liability to compensate claimants in the present case. Although insurer-Company could not legitimately claim exoneration from liability to pay compensation. It is well-settled principle that a person who alleges breach must prove breach of policy by cogent evidence. The insurer could have summoned driver to examine him or responsible officer from the RTO (Road Transport Office) and record from the Transport Authority could have been got produced to prove by positive evidence that the driver had no valid or effective driving licence at the time of accident and owner of the offending motor vehicle had entrusted the motor vehicle to the driver who was disqualified for driving at the relevant time of the incident/ accident. Insurer may escape liability only if he can make out a case of willful infringement or violation of policy by insured, by cogent evidence, if it is found that insured is guilty of negligence for want of reasonable care to fulfill policy conditions. In the result, it must be concluded that in the present case, the Insurer-company for want of any evidence led by it, is liable to compensate the claimants jointly and severally along with the insured. Even otherwise, the insurer is liable to pay first and may then recover the amount paid as compensation from the owner/driver of the offending motor-vehicle as the case may be, in view of settled legal principle stated in the case of National Insurance Co. v. Swarna Singh (supra).

10. The contention by the appellants that Miss Rashmi was learning bicycle or was guilty of contributory negligence is absolutely merit-less. No evidence was led before the Tribunal to support such contention. The contention that appellant-Prashant was acquitted of criminal charges in a criminal case, also cannot absolve him as well as insured and insurer to claim exoneration from liability to compensate claimants in this case. In my opinion, the Tribunal can record it's satisfaction independently on the basis of evidence and material produced before it. Findings by Criminal Court are about proof of guilt beyond all reasonable doubts and can not be equated with test of preponderance of probability as in any civil case. Hence findings by Criminal Court can not be binding upon Tribunal hearing claims under Motor Vehicles Act.

11. Quantum of compensation awarded by the Tribunal is disputed on the ground that it is excessive or exorbitant. I do not agree with this contention of the appellants because the Tribunal has made reference to judicial precedents including Trilokchandra's case reported in 1996 Judgment Today 338 to arrive at conclusion as to quantum. The claimants are parents who lost their college-going young daughter-Rashmi, at the age of 16 years. Assuming she would have earned by means of education and employment in future and considering her notional annual income minimum at Rs. 15,000/ p.a. minus 1/3rd personal expenses = Rs. 12,000/ annual loss of dependency or earnings. Adopting appropriate multiplier, guided by principles in Second Schedule of the Act and assuming even imponderables that enter into computation such as possibility of her marriage at the age of 25 or 26 as also savings of expenses of her marriage by parents, one has to heed facts that her parents incurred medical expenses till she survived in hospital, conveyance expenses and attendance by her parents at Hospital in Nagpur, funeral expenses, loss of love and affection for unmarried daughter appropriate multiplier of minimum 10 could have been considered in the present case and, therefore, the facts and circumstances if considered, in its totality, granting compensation of Rs. 1,20,000/ along with interest at the rate of 12 per cent per annum from the date of application till realization can not be faulted on the ground that award is excessive or exorbitant. The contention by appellants is, therefore, rejected. The payment of interest is required basically by way of compensation when claimant has been denied use of the money to which claimant was entitled. Interest at reasonable and prevalent rate is awarded for the period during which the claimant was deprived of benefit of using the money to which claimant was legally entitled until the date of payment thereof. An usual reference can be made to the ruling in Tahazhathe Purayil Sarabi and Others Vs. Union of India (UOI) and Another, .

For the proposition that claimants are entitled to compensation and interest thereon from the date of application as they cannot be faulted for procedural delays after filing application.

The impugned award do not require interference at the instance of appellant. The claimants also did not challenge the quantum of compensation on the ground of its inadequacy or otherwise. Hence, no further discussion as to quantum is necessary.

12. In the result, for the reasons stated hereinabove, the impugned award is confirmed with modification that the Insurer Company shall also be liable to pay compensation awarded by the Tribunal (inclusive of "no fault liability" u/s 140 of the said Act) together with interest, as awarded by the Tribunal jointly and severally along with appellants owner /driver of the offending motor vehicle. Order accordingly. Appeal is disposed of.