

(2015) 07 BOM CK 0230
In the Bombay High Court
Case No : First Appeal No. 582 of 2004

Pushpalata

APPELLANT

Vs

Ganesh and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 304-A

Citation : (2016) 1 ABR 280 : (2016) 1 ALLMR 231 : (2015) 6 BomCR 199 :
(2016) 1 MhLj 731

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

Bench : Single Bench

Advocate : Bharat Vora, for the Appellant; A.S. Mehadia, Advocates for the Respondent

Judgement

A.P. Bhangale, J—Heard submissions at the bar. After additional evidence was taken pursuant to Judgment and Order dt. 22.7.2013 passed by this Court, learned Member of the Tribunal recorded additional evidence of the following witnesses :

- a) Ramesh Amrutaji Manwar.
- b) Rameshwar Narayan Ingole.
- c) Ramesh Ramchandra Kaware.

2. They were also cross-examined on behalf of the respondent. Thus, record and proceedings of M.A.C.P. No. 206 of 2000 is received and perused. I have read additional evidence recorded while hearing submissions at the bar. It appears that witness Ramesh Amrutaji Manwar deposed before the Motor Accident Tribunal, Akola that he was travelling from Aamgavhan to Umra on 3.12.1999 at about 10 a.m. and then, after his work at Umra was complete, he had started his return journey by Washim to Manora ST Bus bearing Registration No. MH-12/8282. When the bus reached near Chikhalagarh road, the driver applied immediate brakes and in the result, big sound came. The bus stopped by the side

of the road. When this witness alighted from the bus along with other passengers and bus driver, he saw a Luna Moped lying down and by the side of Luna, one person was lying dead having suffered bleeding injury to his head. The bus driver told passengers not to disclose anything about it to anybody and started the bus. When the bus reached Aamgavhan phata, the conductor took back the tickets from the passengers. Later, after 2-3 days, this witness came to know that the person dead was resident of Chikhalagarh by name Haribhau Damaji Gawande, who died as a result of rash and negligent driving by the Bus driver. Thus, the witness deposed as an eye witness to the incident of accident and had also made a statement to the police on 10.12.1999. The witness was cross-examined. Learned Counsel for the opponent who cross-examined this witness could not elicit any material admission from the witness so as to disregard or disbelieve the evidence deposed by the said witness.

3. Another witness Rameshwar Narayan Ingole also deposed that he had travelled by ST Bus bearing registration No. MH-12/8282 and when it was nearing Chikhalagarh phata, the bus driver had applied immediate brakes; in the result, the bus had gone to the side of the road. When the passengers alighted from the bus, the bus driver was in a state of fear having seen a Luna lying at about five feet distance from the bus and one person lying in injured condition by the side of it. The bus driver had realized that he was dashed by the bus and died. But he requested the passengers not to disclose about the incident. Furthermore, the Conductor of the ST Bus took back the tickets from the passengers. Though cross-examined at length, nothing material could be elicited from this witness so as to disbelieve him. It may be the case that the passengers may not have complained to the police about the fact that the Conductor had taken back tickets from the passengers. But the witnesses are consistent with each other on this fact that the ST bus driver had applied sudden or immediate brakes. The ST bus had stopped at the side of the road and when the passengers alighted from the bus, it's driver was in a state of fear because a Luna was lying there along with the injured person riding the Luna just five feet behind the bus. The learned Counsel for the appellant submitted that although witnesses were consistent to each other and withstood the cross-examination, but earlier evidence in a criminal case also indicated that it was the bus driver alone who was responsible for rash and negligent driving of the bus (offending motor vehicle) which resulted into fatal accident of husband of the claimant (Haribhau Gawande, aged about 55 years). Though the driver was acquitted in a criminal case u/ss. 279 and 304-A of the Indian Penal Code, the finding of acquittal was reached at was because the prosecution could not prove the offences beyond all reasonable doubts. The learned Counsel for the appellant submitted that the witnesses who were examined before the Tribunal also made statements before police identically and consistent with their versions as deposed before the Tribunal. Therefore, the issue for consideration before the Tribunal was whether deceased Haribhau Gawande, aged about 55 years met with accidental death as a result of rash and negligent driving of the ST Bus bearing Registration No.

MH-12/8282 (offending motor vehicle).

4. Learned Counsel for the appellant referred to the ruling in the case of *Bimla Devi and Others Vs. Himachal Road Transport Corporation and Others*, (2009) ACJ 1725 : AIR 2009 SC 2819 : (2009) 5 JT 515 : (2009) 5 SCALE 706 : (2009) 13 SCC 530 : (2009) 6 SCR 362 : (2009) 6 UJ 2709 : (2009) AIRSCW 4298 to support his submission that standard of proof in the cases before the Motor Accidents Claims Tribunal are on the basis of preponderance of probabilities. Same standard of proof as in a criminal case to prove the offence punishable under the Indian Penal Code is not applicable as the Motor Vehicles Act, 1988 is a social legislation intending to compensate unfortunate victims of the accident or their dependents with an intention to restore them back as far as possible to the pre-accidental position. Learned Counsel for the appellant with reference to the ruling in *Bimla Devi's* case submitted that the evidence in the present case satisfies the test of preponderance of probabilities to establish that the offending motor vehicle i.e. ST Bus bearing Registration No. MH-12/8282 was involved in the incident of accident which resulted in death of Haribhau Gawande, aged about 55 years. The conduct of the ST bus driver asking passengers not to disclose the incident to anybody and conduct of the ST bus conductor in taking back the tickets from the passengers speak volumes about involvement of the offending motor vehicle in the incident of accident whereby, as a result of rash and negligent driving of the ST bus, Haribhau Gawande lost his life. In the result, therefore, having considered the entire evidence on record coupled with the additional evidence, it was established on preponderance of probabilities that the offending motor vehicle with registration No. MH-12/8282 was indeed involved in the incident of accident. The respondent/M.S.R.T.C. is, therefore, responsible to compensate the claimant on account of death of her husband, who was riding on the Luna on the fatal day and was dashed by the bus which resulted in his death. Thus, the claimant in the present case could establish that the offending motor vehicle was driven rashly and negligently causing accident in which Haribhau Gawande, aged about 55 years died.

5. Claimant Pushpalata had also deposed before the Tribunal that deceased Haribhau was her husband, aged about 55 years and at about night time, at Mangrulpir on Manora road at Chikhalagarh by-pass, the accident occurred whereby criminal case was filed against the ST bus driver and was investigated. Notwithstanding the fact that the ST bus driver was acquitted for want of evidence beyond all reasonable doubts in a criminal case, one cannot disregard the material collected by the police in the form of FIR (marked as Exh.23), spot panchanama (Exh.24), final report (Exh.25), inquest panchanama (Exh.26), Post Mortem notes (Exh.27) and Accident form (Exh.28).

6. Learned Counsel on behalf of the respondent submitted that, for want of sufficient evidence beyond reasonable doubts, the claim was rightly dismissed by the Tribunal. According to him, the witnesses who were summoned and examined pursuant to order passed by this Court remanding the matter to the

Tribunal, must have deposed at the instance of the claimant to favour her. It is submitted that the claim was rightly dismissed by the Motor Accident Claims Tribunal and even additional evidence cannot help the claim made by the widow of the deceased.

7. After having considered the evidence on record, which was recorded as well as the additional evidence and the material in the form of police papers on record, I am satisfied that the Motor Accident Claims Tribunal erred to disbelieve the case of the claimant as there was ample material on record that Haribhau Gawande had died as a result of motor accident in which the offending motor vehicle was involved. Regarding compensation to be granted, it appears that the claimant had claimed a sum of Rs. 3,00,000/-. The learned Counsel for the appellant submitted in view of the ruling in the case of Smt. Darshana Ganesh Kanavaje and Others Vs. Maharashtra State Road Transport Corporation, Shri Maruti Subhanrao Nikam and Shri Sandeep Yashwant Pawaskar, (2014) 1 ABR 429 : (2014) 3 ACC 80 : (2014) ACJ 882 : (2014) 1 ALLMR 1 : (2014) 1 BomCR 801 : (2013) 6 MhLj 779 to argue that this Court has considered leading rulings on the question and awarded compensation in the light of the leading rulings in view of guidelines in the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 in order to assess the compensation in case of death. It is but natural that to award compensation in case of death as a result of motor accident, the relevant factors are :

- a) age of the deceased.
- b) income of the deceased.
- c) number of dependents.

8. Considering additional deductions to be made for arriving at the multiplicand, deduction to be made towards personal living expenses of the deceased and multiplier to be applied with reference to the age of the deceased and also considering that deceased Haribhau was husband of claimant Pushpalata and he was earning a sum of Rs. 5,000/-per month out of his living as an agriculturist and self employed tailor and that he was aged about 55 years at the time of the accident, compensation has to be determined in the following manner :

In order to ascertain multiplicand, income of Rs. 5,000/- p.m. considering that there was only one dependent/widow left, deceased Haribhau must be spending atleast 50 % income for himself, leaving 50 % for his wife. Thus, the annual dependency for the claimant can be taken as Rs. 30,000/-per year multiplied by 9. Therefore, a sum of Rs. 2,70,000/-would be in addition to the sum of Rs. 1,00,000/-to be added as loss of consortium for the widow and loss of love and affection with prospects of additional income in future of her husband viewed at Rs. 1,00,000/-more. Thus, considering the ruling cited in Sarla Verma's case,

compensation payable to the appellant/claimant at Rs. 4,70,000/- would be just and reasonable compensation.

9. According to the learned Counsel for the respondent, the income of deceased which was considered as Rs. 24,000/- by the Tribunal is not under challenge by the appellant. In my opinion, in the light of the rulings and guidelines issued in Sarla Verma's case, the principles on the basis of which compensation can be granted in the death claim cases under the Motor Vehicle Act have attained uniformity for to award just and reasonable compensation in respect of claim made by the claimant. I think that, considering the loss of dependency for the claimant including prospective increase in the income, loss of consortium, funeral expenses, transport expenses etc., a sum of Rs. 4,70,000/- in the facts and circumstances of the present case would be just and reasonable compensation to be awarded deducting therefrom the NFL amount of Rs. 50,000/- together with interest @ 7.50 % p.a. from the date of claim application till payment to the claimant. The appeal is allowed accordingly. The respondents shall jointly and severally pay the unpaid balance sum of Rs. 4,20,000/- as just and reasonable compensation to the claimant together with interest at the rate of Rs. 7.50 % p.a. from the date of Claim Application till realisation thereof. Amount paid and deposited be deducted from the awarded sum.

In view of disposal of the First Appeal itself, Civil Application No. 1244 of 2013 for amendment stands disposed of.