
(2005) 02 BOM CK 0122

In the Bombay High Court

Case No : F.A. No's. 615 of 1998 and 159 of 2000

Satpalsingh Dharamsingh Chowdhary and Another

APPELLANT

Vs

Ashok G. Raut and Others

RESPONDENT

Date of Decision : 17-02-2005

Acts Referred:

Citation : (2006) 1 ACC 341 : (2005) ACJ 1900

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : T.J. Mendon, C.M. Lokesh and P.S. Dani, for the Appellant; D. Mahadik and S.R. Singh, for the Respondent

Final Decision : Allowed

Judgement

D.G. Deshpande, J.—Both these appeals have been filed by the original claimants. They arise out of a common judgment delivered in M.A.C.T., Alibag, in Accident Claim Case Nos. 329 and 382 of 1986. Accident Claim Case No. 329 of 1986 was filed by Satpalsingh Dharamsingh Chowdhary and Anr., who are appellants in First Appeal No. 615 of 1998 and Accident Claim Case No. 382 of 1986 was filed by Ramswarup Ramkaran Tak alias Singh and Anr., who are appellants in First Appeal No. 159 of 2000.

2. The accident which gave rise to these two accident claim cases before the Motor Accidents Claims Tribunal at Alibag, arise in the following manner:

Accident took place on 24.8.1986 at 17.20 hours on Bombay-Goa Road, near village Chichwad, and the vehicles involved there are MMF 7299 and MEH 4641. At that time Vijendra Choudhary and Narendra Singh were travelling in Maruti car No. 7299 from Karnala to Bombay through Bombay-Goa Road. When this car reached village Chichwad and was negotiating ascending curve in a slow speed, a lorry bearing No. MEH 4641 came from the opposite direction in a very rash and negligent manner, in excessive and uncontrollable speed and dashed against Maruti car with force. Due to the dash Narendra died on the spot and other

occupants of the car including Vijendra succumbed to the injuries in Panvel Municipal Hospital. Satpalsingh Dharamsingh Chowdhary and Santosh Satpalsingh Chowdhary are legal heirs of deceased Vijendra and Ramswarup Ramkaran Tak alias Singh and Satyawati are the legal heirs of Narendra, both being the parents of the respective victims. In this background of the matter, the accident claim cases came to be filed.

3. Insurance company resisted the claim as being exorbitant, earnings of the victims, i.e., two deceased persons were also challenged. The parties led evidence and ultimately the Claims Tribunal awarded Rs. 54,200 in Accident Claim Case No. 329 of 1986 to the claimants including the amount of no fault liability and the same amount to the other claimants in Accident Claim Case No. 382 of 1986 including the no fault liability. Being aggrieved by the order/award, these two appeals have been filed.

4. Since there are no cross-appeals either by the insurance company or by the owners of the vehicle, their liability to pay compensation, has to be accepted. The question is of quantum of compensation or amount of compensation, to which the respective claimants in their respective appeals are entitled.

5. So far as deceased Vijendra is concerned, it was argued that at the time of death, he was a young boy of 27 years. His earning was Rs. 8,000 per month.

6. It appears from the judgment of the Tribunal that the Tribunal treated the accident as a case of contributory negligence. In para 30 of the judgment finding is recorded that both the drivers are equally responsible for causing the accident.

7. So far as claim petition filed by heirs of Vijendra is concerned, the Tribunal noted Vijendra was 27 years of age, he was drawing Rs. 8,000 per month, he was giving Rs. 4,000 to Rs. 5,000 per month to his parents and it is also noted that his father Satpalsingh had incurred Rs. 15,000 for funeral and for coming from Punjab to Bombay. The Tribunal considered the age of the parents for determining the multiplier, in para 32 that on the date of the accident Satpalsingh was of the age of 60 years and his wife was 55 years of age.

8. Satpalsingh has adduced evidence about the income of his son Vijendra. He examined PW 2 Mahesh Maniklal Doctor. He deposed that Vijendra was working with him and was being paid Rs. 8,000 per month. This witness has also produced income certificate at Exh. 31. But the Tribunal rejected evidence of this witness on the ground that it was not supported by any payroll or any other account book. It was held that if he was receiving Rs. 8,000 per month in 1987, then the deceased must be paying income tax but since he was not paying income tax, his income to be held as Rs. 15,000 per annum only. Applying this logic, the Tribunal held that he must be paying Rs. 1,000 per month to the family and he would have continued to make this payment till the time of his marriage, for four years. Later on after his marriage the amount would have been reduced.

9. So far as Narendra is concerned, his case is discussed in para 35. Evidence

was led to show that Narendra has started construction business in the name and style as Rajendra Construction Co. He was in construction from May 1986 and was earning Rs. 10,000 per month and he used to give Rs. 5,000 for household expenses. The Tribunal considered the financial position of the father of Narendra. Since Narendra was not paying income tax, his income was taken as Rs. 18,000 per annum. Out of that the Tribunal held that Narendra would have paid Rs. 1,000 to the family till his marriage and later on this amount would have been reduced. It is on the basis of these conclusions that the Claims Tribunal awarded compensation of Rs. 54,200 because of contributory negligence and multiplier appears to have been applied with reference to the age of the parents in both these cases.

10. Counsel for the appellants therefore contended that firstly there was no reason for the Tribunal to reject the evidence about income as adduced by the respective parents. Secondly, it was contended that merely because income tax returns were not filed, it could not mean that the deceased had income below the level fixed by the income tax authorities under the Income Tax Act. He also contended that no inference can be drawn legally in that regard, viz., in the absence of income tax returns, the income must be presumed to be less than or up to the minimum limit exempted under the Income Tax Act. He also contended that ages of the parents of the victims on the date of the accident were different or in any case that aspect of the matter and their longevity or life acceptance of their life, was not at all considered. He further contended that the court made calculation only for a period of four years till the marriage of the victim but did not consider the subsequent period: According to him after marriage the contribution of the victim towards family, i.e., parents may be reduced but it will not come to a zero in any case. He further contended that nothing was granted to claimants in both the appeals of the "loss of their young children, towards mental shock and loss of love, care and consortium. He, therefore, contended that the compensation awarded by the Tribunal is liable to be substantially increased.

11. Counsel for the respondent relied upon the judgment of this court in Sitaram Prabhu Tele and Another Vs. Rajabai Vilas Patil and Others, . It was a case of death where ST bus and truck were involved. The deceased was travelling in truck as bonafide passenger. There was a collision between the bus and truck resulting in the death. The Tribunal awarded Rs. 1,20,000 holding S.T. bus and the truck equally liable for the accident. The question before the court was whether in the case of composite negligence, it is open to apportion the award. After discussing all the relevant judgments in this field, Justice Lodha came to the conclusion "...that in a case of composite negligence to avoid the multiplicity of proceedings, the Tribunal is competent to apportion the compensation in the proportion of their respective negligence. I, therefore, have no doubt in holding that in a case of composite negligence when the drivers of the two vehicles are responsible for the cause of accident, the Tribunal is competent to apportion the liability in the proportion of the respective negligence of the drivers".

12. In this case the Tribunal has come to the conclusion as has been observed by me earlier that this is a case of composite negligence. Therefore, drivers of both the vehicles will have to be held liable. For fixing the percentage of their liability, oral evidence adduced by the parties will have to be considered.

13. In First Appeal No. 159 of 2000 filed by Ramswarup Singh, first witness examined on behalf of the claimants was Ramswarup Singh, the appellant No. 1 himself, he had no personal knowledge about the accident. The second witness was Ravindra Shringarpure, he is a bank employee, he has no knowledge about the accident. The third witness is Bangalore Manohar, Manager of Andhra Bank about the income of the deceased, but he has no personal knowledge about the accident. Fourth witness is Naresh Varkad, Senior Assistant in Bharat Forge Ltd., having no personal knowledge about the accident. Fifth witness is Ramesh Phadke, working in Punjab National Bank, Chembur, he has no personal knowledge about the accident. Sixth witness is Om Prakash Kabra, who was working in Air Freight Ltd., he has no personal knowledge about the accident.

14. In First Appeal No. 615 of 1998 filed by Satpalsingh, first witness examined was Satpalsingh Chowdhary, appellant No. 1 himself. He has no personal knowledge but he produced certified copy of panchnama of the accident, copy of the death certificate, inquest panchnama and the other documents. The other witness is Mahesh Doctor with whom the deceased was employed but he has also no personal knowledge.

15. Therefore, it will be clear that so far as the parents are concerned they had no personal knowledge of the accident but it is equally true that nobody was examined on behalf of the owner of the truck to prove the manner in which the accident occurred. The Tribunal, however, took into consideration the panchnama and following facts were noted from the panchnama by the court:

Dash was in the centre of the road and Mori No. 6/6 at a distance of 18 metres to north. From that point of dash car bearing No. MMF 7299 was found at a distance of 5 metres completely damaged facing towards the eastern side. From Mori on its west truck No. MEH 4641 was found turned turtle, on cleaner side at that place road was having curve and width of the road was 5 metres at the eastern side of the road there was strip of 5 ft. width, and width of the road was about 23 ft., from the truck upto the car pieces of glass were found on the road, portion of the body of the car was found damaged and lying scattered, back door of the car was found behind the truck at a distance of 3 metres. Front door of the car was found but it is not clear from where it was found, skidding marks of the truck were found at a distance of 5 metres, the complete front portion of Maruti car was found damaged, whereas the screen glass of the truck which turned turtle was found broken. No other damage was found on the body of the truck.

16. From the aforesaid factual position as noted in the panchnama, it is clear that the truck gave a very powerful dash to the car. Finding of the back door of the car behind the truck at a distance of 3 metres would show that it was at this

point that car was hit by the truck and then it went ahead. The Claims Tribunal has held in the circumstances that both the drivers were equally liable for causing accident. But, in my opinion, looking to the damage to the car the liability of the car driver appears to be 40 per cent and that of the truck driver 60 per cent. Such apportionment of liability can be made both by the Claims Tribunal and by this court.

17. Counsel for the respondents also placed reliance on the judgment of Delhi High Court in *Krishan Lal Vs. Mohd. Din and others*, , wherein it is held that finding of the Tribunal that the driver of the truck was 70 per cent negligent and driver of the car was 30 per cent negligent and this finding was upheld in the appeal. Other cases on the same point therefore require no discussion.

18. However, the learned counsel for the appellants contended that even if it is a case of joint and several liability of two joint tortfeasors, the claimants can recover the entire compensation from one of them. The claimants' advocate has relied upon the judgment of Karnataka High Court in *Karnataka State Road Transport Corporation Vs. Arun alias Aravind*, , wherein Karnataka High Court held on the basis of the judgment of the Apex Court in *Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others*, :

"... that where the accident has occurred due to negligence of the drivers of two vehicles and not due to negligence of the claimant, one of the joint tortfeasors cannot plead contributory negligence on the part of the passengers of the vehicle and qua the passengers of the bus, who were innocent, the driver and owner of the vehicles would be joint tortfeasors. It is also held that the Motor Accidents Claims Tribunal is clearly an alternative forum in substitution of civil court for adjudicating upon claims for compensation arising out of the use of the motor vehicles. It is well settled that the liability of joint tortfeasors is joint and several and each is responsible, jointly with each and all of the others and also severally for the whole of the amount of damage caused by the tort, irrespective of the extent of his participation. The injured may sue any one of them separately for the full amount of loss or he may sue all of them jointly in the same action and even in the latter case, the judgment so obtained against all of them may be executed in full against any one of them."

19. As against this, counsel for the respondents relied upon the judgment of Delhi High Court in *Krishan Lal Vs. Mohd. Din and others*, , referred to above, wherein Delhi High Court in para 11 held:

"But in the absence of the other joint tortfeasor, i.e., the owner of the car and its insurance company, it cannot be said that the occupants of the car would become entitled to recover the full compensation from the respondents who are before the court. They may not have contributed to this accident or acted negligently, but since they did not implead the owner of the car and its insurance company, therefore, they have to forego 30 per cent of their share of compensation from the tortfeasors who are before the court."

20. Admittedly, judgment of the Apex Court has to be accepted in preference to the judgment of Delhi High Court and, therefore, even if the owner or driver of the car were not joined in the case once the court comes to the conclusion that it is a case of joint and several liability then whatever compensation is awarded, the claimants will be entitled to recover from the party who is joined, i.e., respondents.

21. The next question was about the liability of the insurance company. It was the contention of the insurance company that since the policy was for a limited liability, the insurance company was not liable to pay the entire claim but their claim should be restricted to the amount mentioned in the policy, i.e., limited liability. In this regard, counsel for the appellants contended that in order to prove this particular objection or contention insurance company did not adduce any evidence at all. They did not produce either original policy or its copy and did not therefore prove the terms and conditions of the policy. According to him there is absolutely no material to hold that liability of the insurance company was limited and, therefore, in the absence of the case, he contended that insurance company cannot claim that they were liable to the extent of their limit.

22. I have gone through the record of both the cases and I do not find that the insurance company had examined anybody on their behalf nor was it found that any document about the insurance was filed by the insurance company. Neither policy of the insurance nor its copy nor anything about payment of premium. Though the insurance company was represented by counsel, he also did not point out anything in that regard, therefore, in the absence of any such documentary evidence, mere contention of the insurance company about its limited liability cannot be accepted, it has to be rejected.

23. In this regard counsel for the appellants relied upon the judgment of Delhi High Court in *New India Assurance Company Ltd. Vs. Savitri Devi and Others*, , where the insurance company did not file the written statement and their defence was struck down and neither original nor copy of the policy nor any other evidence was produced by insurance company to show that the liability is limited to Rs. 5,000 as per statute. The question was whether insurance company was liable to pay entire amount and the answer was given by Delhi High Court in the affirmative. This is found in para 14 of the said judgment. This submission of appellants about full liability of the insurance company is required to be accepted.

24. So far as multiplier applicable to the accident claim cases filed by parents of the victims, counsel for the appellants relied upon the judgment of the Supreme Court in *Gyanchand Jain v. Parmanand* 2003 ACJ 2152, where son of the appellant met with accident on 19.5.1987, his age was 26 years. The age of the father and mother respectively was 55 and 48 years. Multiplier of 12 was adopted. Both the claimants and the insurance company filed appeal before the High Court. Appeal of insurance company was dismissed and appeal of the claimants was partly allowed. SLP came to be filed, by the claimants for applying

the multiplier of 18. That contention was not accepted by the Supreme Court. Counsel for the appellants therefore contended that when the age of the parents was 55 and 48 years respectively, multiplier of 12 should be adopted.

25. Now coming to the facts of the case and the claim made by respective claimants, it is to be seen that so far as accident claim case of Satpalsingh is concerned, (First Appeal No. 615 of 1998) they had lost their son Vijendra, 27 years of age. According to Satpalsingh, Vijendra was drawing Rs. 8,000 per month. He examined PW 2 Mahesh Maniklal Doctor who has stated that Vijendra was working with him and he was being paid Rs. 8,000 per month. He also proved income certificate at Exh. 31. Satpalsingh also stated that deceased was giving Rs. 4,000 to Rs. 5,000 per month for household expenses.

26. In this regard the Tribunal discarded evidence of PW 2 Mahesh Doctor and also income certificate Exh. 31 on the ground that it was not supported by any payroll or any other kind of account book. Claims Tribunal held that since no income tax returns are found, the income must be held to be Rs. 15,000 per annum and out of which Vijendra might be paying Rs. 1,000 per month to the family. Then on that basis compensation was granted for four years, i.e., up to the time of the marriage of Vijendra. This reasoning is without any legal basis when Satpalsingh has examined Mahesh Doctor, PW 2, who produced and proved income certificate, Exh. 31, then it stands proved that Vijendra was earning Rs. 8,000 per month. Non-submission of income tax returns would not necessarily mean that the income of Vijendra was Rs. 15,000 per annum and calculation of Rs. 1,000 per month for four years was also not proper. Supreme Court, as stated above, has applied multiplier of 12 where age of the parents was 55 and 48. Satpalsingh in the claim petition has given his age as 60 and 55, therefore multiplier of 8 would be proper. Income of the deceased has to be taken at Rs. 8,000 per month. According to Satpalsingh deceased was giving Rs. 4,000 to Rs. 5,000 per month for the household expenses, his age at the time of accident was 27 years. Therefore, Rs. 4,500 could be taken as contribution of Vijendra to the family for one year, it comes to Rs. 54,000 for four years up to the marriage, it comes to Rs. 2,16,000 and thereafter even if it is taken to be Rs. 2,500 per month it would come to Rs. 30,000 per year, therefore, for four years it comes to Rs. 1,20,000; total comes to Rs. 3,36,000. Since nothing is paid for loss of consortium Rs. 20,000 would be proper. As regards the expenses incurred the Claims Tribunal has found that Rs. 3,100 was the expenses incurred. Therefore, the total would come to Rs. 3,36,000 + Rs. 20,000 + Rs. 3,100 = Rs. 3,59,100. Satpalsingh in his evidence has admitted that he is retired from service as a Special Mail Guard and he was getting pension of Rs. 2,000 per month, he had received Rs. 96,000 by way of provident fund. His another son Arvind was drawing Rs. 3,000 to Rs. 4,000 per month from private service and considering these aspects, total compensation which can be awarded to the appellants is Rs. 3,20,000 + Rs. 20,000 + Rs. 3,100 = Rs. 3,43,100.

27. So far as Ramswarup R. Tak and Anr.-the claimants in First Appeal No. 159 of

2000 are concerned, their son Narendra was 28 years old. He had started proprietary concern under the name and style of Narendra Enterprises. He was also doing construction business under the name and style of Rajendra Construction, he was earning Rs. 10,000 per month and he was giving Rs. 5,000 for the household expenses.

28. Here also the Tribunal took into account income as Rs. 18,000 per annum because there were no income tax returns. But from the evidence adduced it has to be safely inferred that deceased Narendra was earning Rs. 10,000 per month as minimum income from different businesses and he was giving Rs. 5,000 to family per month for household expenses.

29. Ramswarup, appellant No. 1, has stated that he retired as Financial Advisor in Air Frat Limited, his salary at that time was Rs. 10,000 per month, i.e., at the time of retirement. He gets Rs. 80,000 per year by way of interest and he has invested Rs. 5,50,000 in F.D.R. but even after retirement he is earning Rs. 5,000 per month.

30. Ramswarup, appellant No. 1 was 63 years of age and his wife was 58 years of age at the time of death of Narendra. Here also multiplier of 8 has to be applied. If Narendra would get married after 3-4 years, his contribution to the family would have been reduced, therefore, following calculation has to be made:

Rs. 5,000 per month x 12 = Rs. 60,000 x 4 = Rs. 2,40,000

Then Rs. 2,500 per month after marriage x 12 = Rs. 30,000 x 4 = Rs. 1,20,000

Rs. 2,40,000 + Rs. 1,20,000 = Rs. 3,60,000

Considering the financial status and position of Ramswarup the amount has to be given at Rs. 3,40,000 + Rs. 20,000 has to be paid for the loss of consortium, so the total compensation to which appellants claimants are entitled in F.A. No. 159 of 2000, is Rs. 3,60,000.

31. In the result, I pass the following orders:

Order in First Appeal No. 615 of 1998:

The appeal is partly allowed. Impugned order passed in Accident Claim Case No. 329 of 1986, is modified. Compensation awarded is enhanced. In all, respondents to pay to the appellants-Satpalsingh and Anr., a sum of Rs. 3,43,100. The appellants will be entitled to interest at the rate of 9 per cent on the enhanced amount from the date of application till payment.

Order in First Appeal No. 159 of 2000:

The appeal is partly allowed. Impugned order passed in Accident Claim Case No. 382 of 1986, is modified. Compensation awarded is enhanced. In all, respondents to give to the appellants Ramswarup and Anr., sum of Rs. 3,60,000. The appellants will be entitled to interest at the rate of 9 per cent on the enhanced amount from the date of application till payment.