

(2012) 11 BOM CK 0147
In the Bombay High Court
Case No : First Appeal No. 111 of 2006

The Divisional Controller, Maharashtra State Road Transport Corporation APPELLANT

Vs

Shri Shamrao and Others RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Citation : (2013) 1 ALLMR 511 : (2013) 1 MhLj 610

Hon'ble Judges : M.N. Gilani, J

Bench : Single Bench

Advocate : S.C. Mehadia, for the Appellant; Pathade, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Gilani, J.—This appeal arises from the judgment and award dated 27.10.2005 passed by the Motor Accident Claims Tribunal, Nagpur in Claim Petition No. 777/1997 whereby the claimants/respondents herein were awarded compensation of Rs. 6,38,000/- on account of death of Rashi aged about 24 years, who had recently passed M.B.B.S. Examination and was undergoing the internship. Accident occurred on 21.7.2000 on Ghat Road, Nagpur. Rashi was riding pillion on the motorcycle which was being driven by her brother. State Transport Bus bearing Registration No. MH-31-8211 coming from opposite direction dashed against the motorcycle. As a result of this, Rashi sustained injuries and died on the spot. The driver of the bus was charge-sheeted. Claimants are her parents and elder brother.

2. The appellant-original respondent resisted the petition mainly on the ground that there was no negligence on the part of the driver of the bus. The learned Tribunal after assessing the evidence placed on record reached the finding that because of negligence of the driver, accident occurred. Considering the fact that the deceased was about to complete her internship and the quantum of future salary, the Tribunal assumed the annual income of the deceased at Rs. 1,32,000/-. 1/3rd of the amount towards personal and living expenses of the

deceased was deducted. Multiplier of 7 was applied. Under all the heads and the compensation was worked out at Rs. 6,38,000/-. This is challenged in this appeal.

3. Mr. Mehadia, the learned counsel appearing for the appellant raised following grounds:

Firstly, it is contended that the finding reached by the Tribunal that the driver of the bus was negligent and responsible for causing accident, is not supported by evidence on record. Secondly, it is contended that the owner and driver of the motorcycle were not joined. Thirdly, the learned Tribunal committed wrong in assuming the annual income of the deceased at Rs. 1,32,000/- and further committed wrong in deducting 1/3rd of the amount by ignoring the fact that the deceased was unmarried.

4. Miss Pathade, learned counsel appearing for the respondents supported the judgment and award passed by the learned Tribunal.

5. The points which arise for my consideration are:

A] Whether the findings arrived at by the Tribunal holding the driver of the bus responsible for the accident is supported by the evidence on record ?

B] Whether the quantum of compensation worked out is just and fair ?

6. P.W. 2 Harish who was driving the motorcycle entered the witness box to explain the manner in which the accident occurred. He deposed that he was driving the motorcycle in a slow speed. When he reached near Century Hotel, State Transport Bus came from opposite direction in a high speed and dashed against his motor cycle. He and the deceased fell down. The deceased came under rear wheels of the bus. When carried to the hospital, she was declared brought dead. Suggestions were put to him that while overtaking the auto-rickshaw the motorcycle dashed against the bus. Many more suggestions were given to him, however, nothing could be elicited to dislodge his testimony.

7. In rebuttal respondent no. 1-Sohanlal the driver of the bus entered the witness box. According to him, at the time of accident it was raining. He was proceeding slowly and was keeping left. He saw two wheeler coming from opposite direction. There were stones lying on the right side of the road. He also saw some pits by the side of the road. Because of this situation on the road, the ill-fated motorcycle dashed against the stone and fell in a pit. According to him neither the motorcycle nor the body of any person touched the bus. In reply-Exhibit 40 filed by the appellant, it is stated that "a motorcycle-bearing No. MH 31-AM-549, which was coming from opposite direction in a very high speed, came to the extreme right side of the road and gave a dash to the bus of the respondent and as result of which the accident is occurred and the deceased who was pillion rider died.". Thus, oral evidence is totally contradictory to the pleading, in the sense that respondent no. 1-Sohanlal put-forth the case that neither motorcycle nor the deceased touched the bus. In that view of the matter and on probability factor, the learned Tribunal was justified in believing the

testimony of P.W. 2 Harish. This is apart from the fact that police during their investigation, found that the driver of the bus was negligent. In the postmortem note Exhibit 28 as many as 8 surface wounds were noticed including fracture of ribs and lacerated wounds on skull. Obviously, these injuries could not have been possible only because of fall on the road or stones. In that view of the matter, the learned Tribunal was justified in holding that the accident occurred due to rash and negligent driving of the driver of the bus. Consequently, the objection that the driver and owner of the motorcycle were not joined becomes insignificant.

8. The evidence was led to the effect that the deceased had passed her M.B.B.S. examination from Bombay University. As a mandatory condition she was undergoing internship and was getting stipend of Rs. 2,500/-. She was about to complete her internship within next five months. Necessary documents in support of this are produced at Exhibit 29 and 30. The learned Tribunal considered the minimum pay-scale of Rs. 8000-275-13,800/- to which a Medical Officer is entitled to and on that basis calculated the loss of dependency. There is nothing wrong in this approach. The learned Tribunal has relied upon the decision in case of National Insurance Company vs. Smt. Ujjwala and others [2005(2) T.A.C. 392(M.P.)]. It was a case relating to the death of a student of 18 years, who had completed class XIIth standard Examination and was desirous of admission in B.B.A. and M.B.A. in Symbiosis College, Pune. The total compensation awarded was Rs. 5,00,000/-. The Division Bench of the Madhya Pradesh High Court, in that did not interfere with the award by observing that:

Though there may not be any adequate compensation for loss of a son but we have to see whether the amount awarded can be said to be just and proper amount of compensation and it may not be treated as a bonanza. Looking to the family status of the claimants, the educational qualifications, the environment in which the boy was growing, also the future prospects that the boy had, we do not think that the amount awarded is exorbitant or on higher side. In our view, no case for interference was made out.

Mr. Mehadia, contended that deduction ought to have been 50%, since the deceased was unmarried. Even if this contention is accepted, the total amount of compensation cannot be reduced. The Tribunal applied multiplier of 7 having regard to the age of the claimants. As has been held in case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, , the multiplier has to be applied with regards to the age of the deceased. This was followed in case of P.S. Somanathan and Others Vs. District Insurance Officer and Another, . In that case the claims Tribunal had applied the multiplier of 16, which the High Court in appeal had reduced to 5 particularly having regard to the age of the dependents. The Hon. Supreme Court disagreed with the view taken by the High Court and observed thus:

.....By accepting the age of mother at 67, the High Court further reduced the multiplier from 6 to 5, even if we accept the reasoning of the High Court to be

correct. The reasoning of the High Court is not correct in view of the ratio in Sarla Verma. Following the same, the High Court should have proceeded to compute the compensation on the age of the deceased. Thus the finding of the High Court is contrary to the ratio in Sarla Verma which is the leading decision on this question and which we follow.

(emphasis supplied)

In that view of the matter the proper multiplier would have been of 17 and the compensation would have gone to the extent of Rs. 66,000 X 17=11,22,000/-. In that view of the matter no case for interference with the judgment and award impugned is made out.

Accordingly appeal is dismissed with costs.

Part of the amount of the award lying with the Registry of this court be disbursed amongst the claimants in terms of the award.