
(2013) 08 BOM CK 0126
In the Bombay High Court
Case No : First Appeal No. 1275 of 2009

The Divisional Manager

APPELLANT

Vs

Mahadeo, Sau. Parwatibai, Sandeep and Ajay

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A

Citation : (2013) 5 ABR 895 : (2013) 4 ACC 614 : (2013) 6 ALLMR 332

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

Bench : Single Bench

Advocate : S.N. Dhanagare, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Feeling aggrieved by the judgment and award dated 18/6/2009 passed by the Motor Accident Claims Tribunal, Darwha in Claim Petition No. 42 of 2007, appellant-the New India Assurance Company has approached this Court via present First Appeal. Facts of the case are as under:

On 8/2/2003 Manoj Mahadeorao Yete was proceeding by minidor bearing registration no. MH-29/2963 from Bori to Ner. When the said minidor came at Bori Shivar on Ladkhed to Darwha road, one TATA-407 Tempo bearing registration no. MH-31/AP-2124 coming from opposite side from Ladkhed in uncontrollable speed, gave forceful dash to the minidor, as a result of which Manoj Yete died on the spot. The owner of minidor reported the incident to Police Station, Darwha, on which Crime No. 21/2003 came to be registered against the driver of TATA-407 Tempo. Original claimants, who are parents of deceased Manoj claimed that Manoj, who was 21 years of age at the time of accident, was working as a conductor-cum-cleaner and earning Rs. 3000/- per month. They sustained the loss of dependency and claimed total compensation of Rs. 4,25,000/-.

2. Original respondents no. 1 and 2 (driver and owner of TATA-407 Tempo)

appeared and denied the claim of claimants. They denied their liability to pay any compensation to the claimants on the ground that it was the driver of minidor, who was rashly and negligently driving the motor vehicle.

3. The present appellant (original respondent no. 3) filed its written statement and denied all adverse allegations. Appellant claimed that offending vehicle owned by present respondent no. 4 was responsible for the accident and Insurance Company is not at all liable to pay any compensation to the claimants.

4. None appeared for respondents no. 1, 2 and 4 though served. Appeal has already been dismissed as against respondent no. 3 in default.

5. Learned Counsel for appellant-Insurer contends that both the minidor and TATA-407 Tempo were responsible for the accident and learned Tribunal ought to have dismissed the claim petition on the ground that owner and Insurer of the minidor, in which deceased Manoj was traveling were not joined as party-respondents to the claim petition as the case was the one u/s 163-A of the Motor Vehicles Act. He contends that there was contributory negligence on the part of driver of the minidor also.

In the alternative he submits that there was no specific evidence about the income of the deceased and still the annual income of the deceased was taken at Rs. 36,000/-. He contends that where there is no evidence of income, notional income of Rs. 15,000/- per annum has to be taken for calculation of loss and by deducting 1/3rd of it, annual dependency should have been taken of Rs. 10,000/- only and learned Tribunal has not followed this principle while granting compensation.

Without prejudice to this, he contends that looking to the ages of parents of the deceased, multiplier of more than "5" should not have been applied and thus, compensation on higher side has been awarded.

6. Section 163-A of the Motor Vehicles Act, 1988 was introduced by Amending Act, 55 of 1994 (w.e.f. 14/11/1994). It starts with non-obstante clause, whereby the owner of the offending motor vehicle is made liable to pay compensation in cases of death or permanent disablement caused due to accident arising out of the use of motor vehicle. The compensation is determined on structural formula basis as per Second Schedule of the Motor Vehicles Act. The claimants in an application u/s 163-A of the Motor Vehicles Act are not required to plead or establish that the death or permanent disablement caused due to any wrongful act or neglect or default of the owner of the offending motor vehicle concerned. The Central Government may considering the cost of living, amend the Second Schedule by Notification in the official gazette from time to time.

7. The object of the legislature is to provide just compensation with necessary uniformity in such cases, so that claim u/s 163-A of the Motor Vehicles Act can be heard and decided expeditiously. Considering the intent of welfare legislation and considering that the Second Schedule was introduced in the year 1994 and

cost of living in the year 2003 when accident in the present case occurred, the amount of Rs. 36,000/- as assessed towards annual income of the deceased and applying multiplier accordingly is not wrong. Considering the age of the victim as well as ages of the claimants, multiplier chosen as "9" is appropriate and computing compensation accordingly at Rs. 2,30,000/- only inclusive all expenses under conventional head, such as-funeral expenses, loss of estate, expenses incurred by deceased prior to his death for medical treatment and purchase of medicines in the facts and circumstances of the case was reasonable and proper.

8. Rate of interest at 6 % per annum on the sum of compensation from the date of application till realization also appears to be reasonable and proper. Considering that structural formula with reference to Section 163-A of the Act as provided in the Second Schedule of the Act as guideline and it is not free from mistakes and therefore, the Tribunal even considering the structural formula need to apply its mind to the facts and circumstances of the case so as to adjudge claim of compensation given on the basis of structural formula. Considering this legal position and amount of compensation as also grant of interest at the rate of 6% per annum on the amount of compensation from the date of application till realization was reasonable conclusion by learned Member of the Motor Accident Claims Tribunal, Darwha. Therefore, no interference is required in the impugned judgment and order. Hence, following order is passed.

ORDER

- 1) Appeal is dismissed.
- 2) The amount deposited in this Court, which if not yet withdrawn, shall be transferred to the Tribunal for disbursement according to law as it may deem fit.
- 3) Record and Proceedings be sent back to Motor Accident Claims Tribunal, Darwha.