

(2014) 01 BOM CK 0129
In the Bombay High Court
Case No : First Appeal No. 605 of 2013

The Oriental Insurance Co. Ltd.

APPELLANT

Vs

Naina, Chandramohan, Jaidev and M/s. D.P. Jain and Co.
Infrastructure Pvt. Ltd.

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2014) 2 ACC 748 : (2014) ACJ 2427 : (2014) 3 ALLMR 748 : (2015) 1 AnWR 885 : (2015) 1 BomCR 227 : (2014) 3 MhLj 371

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : A.M. Quazi, for the Appellant; P.R. Agrawal, Advocate for the Respondents 1 and 2, Mr. Dippen Jagyasi h/f Mr. Sham Dewani, Advocate for Res. No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.—This appeal arises out of the judgment and Award passed on 01.04.2013 in Claim Petition No. 62 of 2010 by the Motor Accident Claims Tribunal, Achalpur. The respondents 1 and 2 are the claimants who had filed claim petition u/s 166 of the Motor Vehicles Act against the appellant and respondents 3 and 4 respectively, being the insurer of the tipper truck and driver and owner of the tipper truck. This tipper truck together with another vehicle, a luxury buss bearing registration No. MH-35-1671, was involved in the accident. The tipper truck had its registration number as MH-31-CB-4892.

2. It was the contention of the respondents 1 and 2 that their son Ashish Kumar was travelling by the luxury bus on 20.4.2010 when the said tipper truck gave a violent dash to the luxury bus, and it resulted in sustaining of grievous injuries by Ashish. Ashish was 22 years at the time of accident and soon after the accident he succumbed to the injuries sustained in the accident. They further submitted that Ashish kumar had completed his degree course in Engineering

and was a bright student. They further submitted that he was also offered an appointment at the salary of Rs. 25,000/- per month. They also submitted that the death of their son occurred due to composite negligence shown by the drivers of both the vehicles and, therefore, exercising their choice available under the law, they filed a petition claiming compensation from the appellant and respondents 3 and 4.

3. While respondent no. 3 did not file any written statement, respondent no. 4 resisted the petition contending that it was wrongly joined as a party and that the claim petition was liable to be dismissed for non-joinder of necessary parties. The appellant also resisted the petition contending that the owner of the luxury bus and the insurer of the bus were liable and if at all any liability of the appellant was found for payment of compensation, it be directed to be shared in between the appellant and the owner of the luxury bus involved in the accident.

4. The Accident Claim Tribunal framed several issues and upon consideration of the evidence available on record, it found that the death of Ashish Kumar had occurred due to composite negligence of the drivers of the luxury bus and said tipper truck, that the owner and insurer company of the luxury bus were not necessary parties as it was the case of composite negligence, and that the appellant and respondents 3 and 4 were jointly and severally liable to pay compensation to respondents 1 and 2. The Tribunal fixed the amount of compensation payable to respondent no. 1 to be at Rs. 13,21,000/-. Accordingly, by its judgment and Award passed on 1.4.2013, the appellant as well as respondents 3 and 4 were directed to pay jointly and severally the said amount of compensation along with interest, as determined by the Tribunal. Not satisfied with the Award, the appellant-Insurance Company, has preferred this appeal.

5. This matter has been directed to be fixed for final hearing by this Court by an order passed on 9.12.2013. Accordingly, I have heard Shri Quazi, learned counsel for the appellant, Shri P.R. Agrawal, learned counsel for respondents 1 and 2 and Shri Dewani, learned counsel for respondent no. 4. Considering the fact that this appeal raises debatable issues, this appeal is admitted and by consent of the parties it has been heard finally.

6. The points that arise for my consideration are as follows:

(i) Whether the Tribunal was justified in fastening the entire liability for payment of compensation upon the appellant and respondents 3 and 4 after having found that the death of Ashish Kumar had occurred due to composite negligence shown by the drivers of luxury bus as well as tipper truck?

(ii) Whether the amount of compensation granted by the Tribunal is just and proper?

7. It has been contended by Shri Qazi, learned counsel for the appellant, that the Tribunal has very specifically found that the extent of negligence shown by the driver of the luxury bus, one of the vehicles involved in the accident, was 30%

and the negligence of tipper truck was 70% and, therefore, the Tribunal could not have fastened the entire liability for payment of compensation upon the owner, driver and Insurance Company involved in the accident. Learned counsel for respondent no. 4 agrees with the same.

8. Learned counsel for respondents 1 and 2, relying upon the judgments rendered by the apex Court in the cases of T.O. Anthony Vs. Karvarnan and Others, and A.P.S.R.T.C. and Another Vs. K. Hemalata and Others, , submits that the law in this regard is very clear and, therefore, no fault with the view taken by the Tribunal in fastening the liability to pay compensation upon the appellant together with respondents 3 and 4 could be found.

9. In the case of T.O. Anthony, *supra*, the difference between the concept of composite negligence, and that of contributory negligence has been explained by the apex Court. It has been held that in an accident involving two or more vehicles, where a third party (other than the drivers and/or the owners of the vehicles involved) claims damages for loss or injuries resulting from wrong doing or negligence of two or more persons, it is said that compensation would be payable on account of composite nature of negligence of drivers of those vehicles. The apex Court has further observed that if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver himself. It is clear from the law so laid down by the apex Court that the expression "composite negligence" refers to the negligence on the part of two or more person in a case where the compensation is claimed by a person who is not a driver or owner of the vehicle involved in the case. The concept of "contributory negligence" applies only when the claimant is seeking compensation for the injury or loss on account of death or loss on account of damage to the vehicle caused by not only negligence on the part of the driver of his own vehicle but also on the part of the other vehicle involved in the accident.

10. In paragraph 6 of the said judgment of T.O. Anthony, *supra*, the apex Court has also dealt with the aspect of necessary parties in a claim petition based upon composite negligence. The apex Court has held that in such a case, i.e. case of composite negligence, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. Having held so, the apex Court has laid down that in such a case, an injured person has a choice of proceeding against all or any of the wrongdoers responsible for causing of the accident. This law has been followed in the subsequent judgment rendered by the Hon"ble apex Court in the case of A.P.S.R.T.C. v. Hemalatha, *supra*.

11. It is seen from the impugned judgment and Award that the Tribunal has also considered the aspect of necessary parties by following the law laid down in the case of Satpalsingh Dharamsingh Chowdhary and Another Vs. Ashok G. Raut and

Others, and held that the driver, owner and insurer of the luxury bus involved in the accident were not the necessary parties in the case. The finding recorded by the Tribunal is absolutely consistent with the law settled by the apex Court and as discussed in the aforesaid cases of T.O. Anthony and Hemalatha. As such, I find that the Tribunal has committed no error of law in this regard.

12. Once it is found that it is the choice of the injured or legal heirs of the deceased to proceed against one of the wrongdoers in a case involving composite negligence, the direction issued by the Tribunal regarding payment of compensation jointly and severally by the driver, owner and insurer of one of the motor vehicles, cannot be held to be illegal and unjustified. Therefore, I find no merit in the argument of learned counsel for the appellant that the Tribunal was in error in not proportionately apportioning the liability in between the driver, owner and insurer of the luxury bus on one hand and the driver, owner and insurer of the tipper truck on the other hand. Point no. (i) is thus answered in the affirmative.

13. Learned counsel for the appellant has submitted that the Tribunal ought to have considered the fact that father of deceased Ashish Kumar was an earning member of the family and, therefore, the Tribunal ought to have deducted not 50% but, 2/3rd of the notional income account of personal and living expenses of the deceased.

14. Shri Agrawal, learned counsel for respondents 1 and 2, on the other hand, placing reliance upon Amrit Bhanu Shali and Others Vs. National Insurance Co. Ltd. and Others, has submitted that 50% deductions made by the Tribunal are in accordance with the law settled by the Hon''ble apex Court.

15. Upon going through the judgment in Amrit Bhanu Shali's case, supra, I find that the learned counsel for respondents 1 and 2 is right. In this case, the Hon''ble Supreme Court has considered the case of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and has held that where the deceased was a bachelor and the claimants are the parents, 50% deduction should be made towards his personal and living expenses. Since this principle of law has been stated by the apex Court in its latest judgment, and the finding recorded in this behalf by the Tribunal is in accordance with the law settled by Hon''ble Supreme Court, I do not think that any error in the said finding could be found by this Court.

16. The next contention of learned counsel for the appellant is that in this case the multiplier adopted by the Tribunal is not in consonance with the principles laid down in this regard by the Hon''ble apex Court in its various judgments. He submits that the multiplier should have been adopted bearing in mind not only the age of the deceased but also the age of the parents and the marital status of the deceased. In support of this, he has placed reliance on the decision of apex Court in the case of The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, . On the other hand, learned counsel for respondent

no. 4 submits that there has been some change in this law and the latest law is to be found in the case of Amrit Bhanu Shali, supra. He submits that it is now well settled that the multiplier that has to be adopted by the Tribunal must be on the basis of the age of the deceased and his marital status and it should have no relation with the age of his parents.

17. No doubt, in the case of Laxman Iyer, supra, the apex Court has held that the relevant factors which are required to be considered for selecting the multiplier would be (i) age of the deceased; (ii) age of the claimants; (iii) marital status of the deceased; (iv) separate income of the claimants and their education; and (v) loss of pecuniary benefits. But it appears that in a later judgment in the case of Sarla Verma, supra, the apex Court has considered the ratio of various cases, particularly those rendered in the cases of General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs. Susamma Thomas and others, , U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, and New India Assurance Co. Ltd. Vs. Charlie and Another, and prepared a table containing the multipliers to be applied by the Tribunal with reference to the age of the deceased. This decision in the case of Sarla Verma has been further considered by the apex Court in the case of Amrit Bhanu Shali, supra, and following it, the apex Court found that the selection of the multiplier must be based upon the age of the deceased and not the age of the dependents. This is what the apex Court has observed in paragraph 15 of its judgment in Amrit Bhanu Shali:

The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependent. There may be a number of dependents of the deceased whose age may be different and, therefore, the age of the dependents has no nexus with the computation of compensation.

18. Having regard to the law recently settled by the apex Court and as discussed above, I am of the view that even the selection of multiplier made by the Tribunal in this case, which was on the basis of age of the deceased and his marital status, cannot be considered to be erroneous. In the circumstances of the case, I see no error of fact or law in the reasoning adopted by the Tribunal in fixing the compensation to be awarded to respondents 1 and 2. I see no merit in this appeal. It deserves to be dismissed. Hence, the appeal stands dismissed with costs.