(2013) 07 BOM CK 0221

In the Bombay High Court

Case No : First Appeal No''s. 316 and 861 of 2010

United India Insurance Company Ltd. — APPELLANT

Vs

Aruna and Others
 Dharmendra and Narendra Vs United India Insurance Co. Ltd. and Others — RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Citation : (2013) 5 ALLMR 570

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

Bench : Single Bench

Advocate : D.P. Shouche in First Appeal No. 316 of 2010 and Mr. N.S. Warulkar in First Appeal No. 861 of 2010, for the Appellant; R.J. Kankale, Advocate for respondent Nos. 1 to 4 in First Appeal No. 316 of 2010 and First Appeal No. 861 of 2010 for respondent no. 2 to 5, Shri N.S. Warulkar, Advocate for respondent Nos. 5 and 6 in First Appeal No. 316 of 2010 and Shri B. Lahiri, Advocate for respondent No. 1 in First Appeal No. 861 of 2010, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Both these appeals are directed against the same judgment and award passed in M.A.C.P. No. 68 of 2007, by learned Member, Motor Accident Claims Tribunal, Akola on 18/05/2009 whereby the Tribunal granted compensation in favour of the claimants in the sum of Rs. 11,29,800/- together with interest at the rate of 8.5% per annum from the date of filing of the petition till realization. Facts in nutshell are as under:-

Deceased Aniruddha Khedekar was the husband of claimant No. 1 and father of claimant Nos. 2 to 4. He was travelling in a Tata Scorpio Taxi from Yavatmal to Akola on 11/07/2006. It is the contention of the claimants that the taxi was driven by Narendra Haribhau Tayde in a rash and negligent manner, when it had reached at Lanjkhed, Taluka Darwha at about 4.00 p.m. on the curve, driver lost his control over the vehicle and it was toppled down thrice, resulting into severe injuries to Aniruddha Relkar. Aniruddha was admitted in Government Hospital in

Yavatmal and then shifted to Tambe Critical Care Unit, Nagpur. However, he died on 05/09/2006 at the age of 55 years. Deceased Aniruddha was serving in Maharashtra Jivan Pradhikaran Department with monthly salary in the sum of Rs. 13,488/-. According to claimants, they had lost their only source of earning member of the family and demanded compensation in the sum of Rs. 12,00,000/-.

2. The owner/driver and insurer of the offending vehicle disputed their liability. According to insurer company, it was not liable to pay compensation because driver was not holding valid driving licence at the time of accident and accident occurred due to overloading of passengers in a vehicle.

3. The Tribunal after examining evidence on record led by claimant No. 1, medical evidence of Dr. Vilas Tambe, and employee of the Maharashtra Jivan Pradhikaran Department Shri Umakant Chincholkar and Police documents such as FIR (Exhibit-28), spot panchnama (Exhibit-29), motor accident report form (Exhibit-39), death certificate (Exhibit-31), medical bills (Exhibit-33 to 38 collectively), etc.

4. Considering the nature of evidence, Tribunal held that Aniruddha Relkar died as a result of rash and negligent driving of motor vehicle bearing No. MH-30-6095 and it was held that claimants are entitled for compensation on account of death of Aniruddha Relkar in the road accident caused by the above offending vehicle. The Tribunal had granted compensation in the sum of Rs. 11,29,800/- with interest at the rate of 8.5% per annum from the date of the petition.

5. I have heard the submissions advanced on behalf of the insurance company, owner/driver as well as claimants. Learned Advocate for the insurance company & owner/driver argued that the compensation was excessive and quantum should have been fixed low because of the age of the dependents and age of grown up children, who can on their own will become earning member of the family in near future.

6. Reference is made to the ruling in Union of India and others Vs. K.S. Lakshmi Kumar and Others, , wherein it is held that interest can be awarded from the date of claim petition and not from the date of accident. The rate of interest should be normally at 6% per annum where compensation awarded consists of only general or non-pecuniary damages, but where compensation awarded is a fair mix of general and special damages, the interest rates should normally be at 9% per annum, in case of special or pecuniary damages, the interest rate may be awarded at 12% per annum with ceiling of 12% per annum. Suffice it to say that award of interest is a discretion of the Tribunal and purpose of the grant is to compensate for the delay occurring in payment from the date of the claim application till its realization. The interest is awarded payable on the amount arrived at as the sum of just and fair compensation.

7. In the present case, the liability of the insurer to pay compensation cannot be

negatived particularly when there was no dispute about the fact that offending motor vehicle was covered by insurance policy, validity period thereof covering the date of accident. The arguments were directed about the quantum of compensation, which according to appellant was excessive. In the case in hand it appeared that there was evidence in respect of salary of the deceased at Exhibit-43 as Rs. 13,998/-. Aniruddha Relkar was born on 04/10/1951 and he died on 05/09/2006 (Aged approx 55 years). Thus, the Tribunal computed the approximate loss in the sum of Rs. 5,00,000/-, considering the age of the deceased and his probable life expectancy. It is no doubt true that claimant Nos. 2 to 4 unmarried sons and daughters of the deceased are grown up children and in near future they may earn on their own, joining service or job after completion of their education. In normal course deceased would have retired in October, 2009 on superannuation and after death, the claimants were bound to receive dues payable on account of completion of his services. Considering the gross salary which deceased was earning in the sum of Rs. 13,998/- and his annual income as Rs. 1,57,896/- and age of deceased in the age group of 55 to 60, the multiplier 8 was made applicable, which according to learned Advocate for the claimants is less. However, Tribunal gave reasons to apply low multiplier. That according to Tribunal, age of the deceased, age of the dependent widow, probable life expectancy, remaining service of the deceased, dues payable to the dependents of the deceased on account of completion of service, are all factors, which would have to be considered to compute just and fair compensation. The Tribunal was justified to think over the ponderable and imponderables. Therefore, no fault can be found with the findings recorded by the Tribunal for applying multiplier 8. The compensation on account of medical bills and medical treatment to the deceased before his death was already granted in the sum of Rs. 2,80,659/- while under conventional head, widow was entitled to loss of consortium amounting to Rs. 5,000/-, compensation for funeral expenses in the sum of Rs. 2,000/-. Thus, total sum of Rs. 11,29,796/-, which is rounded up to Rs. 11,29,800/- was granted along with interest at the rate of 8.5% per annum from the date of the petition till recovery of the amount of compensation.

8. After examining the facts and circumstances of these cases, compensation amount arrived at and granted by the Tribunal was just and fair arrived at after examination of pros and cons of the present cases including ponderables and imponderables in this regard and bearing in mind that there was no any cross-objection in the appeals, nor their any separate grievance for challenging the quantum of compensation granted by the Tribunal. I do not find any serious infirmity in the reasons recorded by the Tribunal. The Award, in the facts and circumstances of the case, of the compensation along with interest payable was just and proper and require no interference. Hence, both these appeals have to be dismissed.

9. For the reasons aforesaid, both the appeals are dismissed with no order as to costs. The amount which is deposited in this Court, if any, be transferred to the Tribunal for payment to the claimants in execution of the award.

