
(2013) 08 BOM CK 0140

Bombay High Court (Nagpur Bench)

Case No: First Appeal No. 224 of 2007

The Oriental Insurance
Company Ltd.

APPELLANT

Vs

Smt. Bindu and Others

RESPONDENT

Date of Decision: Aug. 12, 2013

Citation: (2013) 08 BOM CK 0140

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

Bench: Single Bench

Advocate: Mrunal Naik, for the Appellant;

Final Decision: Dismissed

Judgement

A.P. Bhangale, J.

This appeal is directed against the Judgment and Award dated 31st March, 2005, whereby the Motor Accident Claims Tribunal, Amravati granted compensation in the sum of Rs. 6,80,000/- inclusive of no fault liability with future interest at the rate of 9% per annum from the date of petition till realization of the amount. Facts briefly stated are as under:

Claimants are widow and children of Dr. Ashok Rangrao More, Homeopathic Doctor practicing at Mangruli Peth, Karajgaon and Loni. Dr. Ashok More was going to Achalpur from Anjangaon by his motor cycle bearing registration No. MH-27/K-2234. The incident happened on 6/6/2000, when a Jeep bearing registration No. MH-27/D-592 came from opposite direction and forcefully dashed to the motor cycle of Dr. Ashok. In the result, Dr. Ashok More died.

2. It is not in dispute that on the date of accident, offending motor vehicle i.e. Jeep bearing registration no. MH-27/D-592 was covered by insurance policy with the appellant and further that the said jeep was owned by original respondent no. 2 Shivcharan A. Modge and was driven by original respondent no. 1 Subhash Baliram Damage, both are r/o. Shindi (B), Tahsil Achalpur, District Amravati.

3. The Tribunal after considering the evidence led before it, held that deceased Ashok More died because of rash and negligent driving of jeep bearing no. MH-27/D-592 driven by Subhash Damage and thus since it was insured with the appellant, appellant held jointly and severally liable along with the owner to pay compensation with interest.

4. Learned Advocate for the appellant criticized the Judgment and Award on the ground that it is excessive. So also criticized the award of interest granted at the rate of 9% per annum as excessive. According to learned Advocate for the appellant, there was no legal evidence regarding income of Dr. Ashok More. Learned Advocate submitted that date of birth of Ashok More was not proved and, therefore, also the Award is excessive as certificate of registration at Exh. 32 ought not to have been believed by the Tribunal. As also evidence of the compounder led by claimants in support of the claim.

5. I have considered the submissions in the light of evidence led on record. It appears that claimant Bindu Ashok More, who is widow of victim deposed in the Tribunal about the police papers namely, FIR (Exh. 27), Spot Panchanama (Exh. 28), Inquest Panchanama (Exh. 29), Postmortem Notes (Exh. 30) and Cover Note (copy of the insurance policy) Exh. 31. According to her, her husband was practicing at villages Mangruli Peth, Karajgaon and Loni and was only doctor available at village Karajgaon and was earning Rs. 75,000/- per month. Thus, she had claimed compensation in the sum of Rs. 6,00,000/-. While acknowledging that she had received sum of Rs. 50,000/-. She also relied upon certification of her husband as Homeopathic Doctor at Exh. 32.

6. Admittedly, she was not an eye-witness to the incident or accident, but she had no reason to lie about the incident. Her evidence is supported by Compounder, who deposed that at Mangruli Peth and Karajgaon while Dr. Ashok More was practicing as Homeopathic and Allopathic doctor, he was earning sum of Rs. 300/- to Rs. 350/- per day and Compounder Sunil Rambhau Zambde used to accompany with him at villages Mangruli and Karajgaon.

7. Although witness Sunil Zambde has no documentary evidence to show that he was getting salary of Rs. 1000/- per month from Dr. Ashok More, as also license, his evidence cannot be disbelieved. Because Homeopathic doctor practicing at villages would not normally maintain record of his income as well as payment of salary to his assistant. It is true that in villages, a Doctor practicing in Homeopathic medicines would not earn as much as such doctor practicing in city or town. But, he can have increased income due to rising inflation in the passage of time.

8. Police papers on record, which were exhibited in the course of evidence would indicate the nature of accident as also injuries and cause of death of Dr. Ashok More. Although certificate of registration (Exh. 32) bearing No. 11802 is criticized as not legally proved, perusal of it would indicate that there is Government Seal to it, whereby Dr. Ashok Rangrao More was certified as registered under Bombay Homeopathic and Biochemic Practitioners" Act, 1959 as on 28/11/1984. That being so, I have no doubt that victim was

doctor practicing Homeopathic medicines in villages as appeared in evidence led.

9. Considering his medical profession and field of practice in at least three villages, it may be believed that he was earning sum of Rs. 300/- to Rs. 350/- per day as deposed by his Compounder. Thus, considering his income between Rs. 4000/- to Rs. 4500/- per month and deducting 1/3rd amount out of it, which victim would have spent for his personal expenses, loss of dependency in the facts and circumstances of the present case can be arrived at Rs. 3000/- per month, which is annually comes to Rs. 36,000/-. Towards future prospects of increases in income, we must safely add 30% of amount to calculating it at Rs. 10,800/- = Rs. 46,800/- total.

10. Considering the age of Dr. Ashok More as "35 years" at the time of his death, proper multiplier applicable would be "15". Thus, Rs. 46,800/- total annual income multiplied by "15" as multiplier applicable, figure comes to Rs. 7,02,000/- to which if compensation towards conventional head is added--e.g. expenses incurred for funeral expenses, loss of estate, loss of consortium, loss of love and affection for children, at least aggregate sum of Rs. 1,20,000/- will have to be added. Thus, total reasonable compensation payable is sum of Rs. 8,22,000/-.

It is duty of the Tribunal to award just, fair and reasonable compensation irrespective of amount claimed by the claimants. Hence, modification is required as above in view of the ruling in [Rajesh and Others Vs. Rajbir Singh and Others](#), . In para 19 (three Judges Bench ruling) held so after referring to the cases of [Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another](#), and [Santosh Devi Vs. National Insurance Company Ltd. and Others](#), .

Regarding the rate of interest awarded by the Tribunal, considering the date of accident, to me it appears on higher side. Hence it can be reduced to Rs. 7.50% instead of from 9% payable from the date of claim petition till realization. In this view of the matter, while appeal is dismissed, the impugned Award ought to be modified in following terms to award just, fair and reasonable compensation as court is duty bound as held in case of Rajesh & others (supra). Hence, the following order is passed.

ORDER

1) Appeal is without merits. It is dismissed.

2) The claimants shall be entitled to just compensation in the sum of Rs. 8,22,000/- inclusive of no fault liability with future interest at the rate of 7.50% per annum from the date of claim petition till realization of the amount.

3) The appellant is jointly and severally liable with owner and driver of the offending Jeep to pay the compensation amount with interest @ 7.50% per annum along with owner and driver of the offending motor vehicle.

- 4) The amount already deposited in this court or in the Tribunal pending hearing and disposal of this appeal or adjusted with payment of compensation already received by the claimants.
- 5) Balance shall be payable along with interest @ 7.50% per annum as ordered till realization of entire amount due.
- 6) The amount deposited in this court be transferred to Motor Accident Claims Tribunal, Amravati for to enable the Tribunal to disburse the payment by the Tribunal as it may deem fit pursuant to final Award.
- 7) The appeal is dismissed and award is modified as above.