

Bhalchandra and Another Vs. Shardabai and Others

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Court : Mumbai Aurangabad

Decided On : Jul-15-2014

Judge : T.V. Nalawade

Appeal No. : First Appeal Nos. 439 of 2007 & 927 of 2007 with Civil Application Nos. 352 of 2014 & 4059

Appellant : Bhalchandra and Another

Respondent : Shardabai and Others

Judgement :

1. Both the appeals are filed against judgment and award of Claim Petition No.96/2003 which was pending before the Claims Tribunal, Jalgaon. Respondent Nos.1 to 3 from the two appeals were claimants and the claim was filed under section 166 of Motor Vehicle Act, 1988 (in short 'the Act'). The Tribunal has granted compensation of Rs. 9,50,180/- with interest at the rate of 7% p.a. from the date of petition. The owner of the offending vehicle has filed First Appeal No. 439/2007 and the Insurance Company has filed First Appeal No.927/2007. All the sides are heard.

2. According to the claimants, the accident took place on 11.6.2003 on Ambad Charphula-Mantha Road at about 9.30 p.m. and the spot is situated near Revgaon, in Jalna city.

3. It is the case of claimants that the deceased Manohar Ugale was present as pillion rider on motorcycle and the motor cycle was being driven by one Laxman Gangadhare. It is their case that Laxman drove the motorcycle bearing No.MH-21/B-4005 rashly and negligently and the motorcycle gave dash to the railing of fly over and the accident took place. It is contended that Manohar was seriously injured in the accident and he succumbed to the injuries on 26.6.2003.

4. The original claimant No.1 is the widow of deceased. Claimant Nos.2 and 3 are minor son and daughter of deceased. The age of the issues was 16 years and 10 years at the relevant time. It is their case that the deceased was working in Tahsil Agricultural Office of State Government and his gross salary per month was Rs.9,045/-. All the aforesaid claimants were depending on the deceased for their livelihood.

5. Respondent No.1 from the claim petition was registered owner of motorcycle as per the information supplied to police but he had transferred the vehicle prior to the date of accident to respondent No.3. Respondent No.2 is the Insurance Company of the vehicle involved in the accident. The compensation of Rs.11 lakh was claimed.

6. Respondent Nos.1 and 3 filed separate written statements, but they took similar defence. The fact that the motorcycle was transferred by respondent No.1 to respondent No.3 is not disputed. It is there alternative defence that if owner of the vehicle is held responsible to pay the compensation, the Insurance Company needs to indemnify the owner.

7. One contention which was probably made due to oversight in claim petition that the deceased Manohar was riding the motorcycle at the relevant time is admitted by respondent Nos.1 and 3 in their written statement. Here only it needs to be observed that in the particulars which are required to be given as per the form prepared under Maharashtra Motor Vehicle Rules, under the Act, the particulars were correctly supplied and it was contended in the clause Nos.6 and 7 of the particulars that Laxman was riding the motorcycle and he caused the accident. In the story, in more particulars, it was contended in the petition that Manohar was riding the motorcycle. It was sheer mistake.

8. Respondent Nos.1 and 3 denied the involvement of the aforesaid motorcycle in the accident. They contended that the crime was registered after 38 days of the alleged incident and this circumstance is sufficient to infer that their motorcycle was not involved in the accident. They have contended that false record was created after the death of deceased by taking the help of police. Alternatively, they have contended that deceased himself was riding the motorcycle and he caused the accident. The Tribunal has held that respondent No.3 was the owner of the vehicle at the relevant time.

9. In the written statement, Insurance Company has contended that it needs to verify the policy as only copy of Insurance Certificate was produced by the claimants. The Insurance Company denied the claim for want of particulars of Insurance. The Insurance Company also denied that Laxman caused the accident. The contentions regarding loss of dependency were also denied by the Insurance Company. The Insurance Company also contended that the claimants need to prove that the rider of the motorcycle was holding valid and effective driving licence at the relevant time. It is contended that there has been breach of conditions of policy. The Tribunal has held the Insurance Company jointly and severally liable to pay the compensation along with respondent No.3.

10. Claimant No.1, widow gave evidence. She examined one employee of the office of deceased to prove the salary income of the deceased. The claimants relied on the police papers to prove that Laxman caused the accident and Manohar died in the accident. No evidence in rebuttal is given by respondent Nos.1 and 3. Insurance Company did not examine any witness. Insurance Company produced office copy of Insurance Certificate to prove that it is not liable to indemnify the owner. In additional written statement filed at Exh. 41, respondent No.3 admitted that it was third party risk policy. Respondent No.3, however, contended that pillion rider of the motorcycle needs to be treated as 'third party' for the purpose of the Act.

11. Claimant No.1 has given evidence that on the day of accident, the deceased left home at about 6.30 p.m. with Laxman. She has given specific evidence that the deceased left home as pillion rider of the motorcycle which Laxman was riding.

She has given evidence that at 9.30 p.m. she learnt about the accident. She has given evidence that in the Government Hospital, she learnt about the details of accident. She has given evidence that according to her, accident took place due to fault of Laxman as the dash was given by motorcycle to railing of the fly over. In the claim petition, she has contended that in the hospital, deceased disclosed that the accident took place due to negligence of Laxman, but she did not give such substantive evidence before the Tribunal. However, there is the evidence of aforesaid nature that the deceased was pillion rider when he left on the motorcycle with Laxman.

12. The claimant No. 1 was extensively cross examined by learned counsel for respondent No.3. It appears that there was some confusion in the mind of claimant. She has admitted that her husband also owned a motorcycle and said motorcycle was sold after the accident. Submissions were made that probably the motorcycle of the deceased was involved in the accident and motorcycle bearing No.4005 is falsely shown in the accident. The evidence of the widow of deceased, however, does not show that she admitted that motorcycle No.4005 was not involved in the accident. Her evidence shows that the rider of the motorcycle, Laxman is her close relative. It can be said that due to confusion created in the mind of witness, who is housewife, she gave aforesaid evidence, but the evidence needs to be read as a whole and it shows that as per her version, Laxman was riding the motorcycle and motorcycle bearing No.4005 was involved in the accident.

13. The F.I.R. at Exh. 46 was given by the widow of deceased and it is consistent with her aforesaid version. She blamed Laxman for accident and admittedly, police made investigation and filed the charge-sheet against Laxman for the offences punishable under sections 304 (A), 279, 338 of Indian Penal Code.

14. The record of police papers show that when the accident took place on 11.6.2003, report was given to police on 16.7.2003. Manohar died on 26.6.2003. After the death of Manohar, enquest panchanama was prepared and P.M. was conducted on the dead body. At that time, history of road traffic accident was given to police and that history is mentioned in both enquest panchanama and P.M.

report.

15. Copy of judgment of criminal case which was filed against Laxman is produced on record. This judgment shows that the widow of deceased did not give evidence against Laxman that she learnt from deceased that Laxman caused the accident. There was no other eye witness and only Laxman could have explained the things. The spot panchanama was drawn on 29.6.2013 and on that day also, there were marks of dash given to the railing of the fly over by the motorcycle.

16. Laxman was not made party to the proceeding but in view of the aforesaid circumstances, it was necessary for the respondents to examine Laxman, who could have explained the things. As there is nothing in rebuttal and as there is no evidence of Laxman, this Court holds that the aforesaid evidence is sufficient to prove the involvement of the motorcycle bearing No.4005 in the accident and the fault of Laxman. As Laxman is close relative of widow of the deceased, there was no reason for her to falsely implicate Laxman in such a case. This Court holds that the Tribunal has not committed any error in holding that the involvement of the aforesaid motorcycle is proved and further the fault of the Laxman is proved for the purpose of present proceeding.

17. Reliance was placed by the learned counsel for the appellant, owner on two reported cases like 2006 (1) T.A.C. 698 [Shanti Bai Vs. Charanjeet Singh and Ors.] and 1994 ACJ 887 [Gulab Chand Dhot Vs. P.N. Aggarwal] on the point of proof of negligence. The facts and circumstances of each and every case are always different. This Court has already quoted relevant facts of the present case. This Court has no hesitation to observe that the observations made in the aforesaid two reported cases are of no help to the original respondents, owner and Insurance Company.

18. On the point of quantum of compensation, there is evidence of widow of deceased and one employee of the office of the deceased. The salary certificate is duly proved and it shows that the gross monthly salary of the deceased for the month of May 2003 was Rs.9045/-. Professional tax of Rs.175/- was deducted and that was the only standard deduction. Thus, the net income of the deceased was Rs.8,870/-. With Civil Application No.4059/2014 filed in this Court, the owner has

filed the first page of service book of the deceased showing the date of birth of deceased as 20.1.1955. The Tribunal accepted the evidence that the age of the deceased was 45 years at the relevant time and the Tribunal adopted 13 as a multiplier for calculation of loss of dependency. The learned counsel for the claimants was asked to explain the things like the circumstance of age in view of the date of birth mentioned in the service book. As there is no other record, this court holds that the service book record needs to be considered for ascertaining the multiplier. As per this record, the age of the deceased was 48 years 5 months at the relevant time.

19. The deceased was in Government Service and the age of retirement for his post was 58 years. Thus, the service of around 9 years and six months was left. In view of the ratio laid down in the case reported as (2009) 6 SCC 121 [Sarla Verma Vs. DTC], this Court holds that the increase of 30% in the income needs to be given for calculation of loss of dependency. Thus, the monthly income of deceased was around Rs.11,800/-. In view of the size of the family of the deceased, the deceased would have spent 1/3 amount for himself and so, monthly loss of dependency was Rs.7,847/-. In view of the service left of the deceased, this Court holds that at the most multiplier of 9.5 can be used for calculation of total loss of dependency, in respect of remaining service period. This amount comes to around Rs.8,94,000/-. It can be presumed that after the retirement, the deceased would have done some work and he could have earned atleast Rs. 3,000/- per month after retirement. The multiplier of 3 can be used for the remaining period of life. Out of the amount of Rs.3,000/-, one third amount can be deducted for personal expenses of the deceased and thus, the loss of dependency in respect of remaining period comes to around Rs.72,000/-. In view of the ratio laid down in the case of (2013) 9 SCC 54 [Rajesh Vs. Ranbir] an amount of Rs.25,000/- could have been given under the head of funeral expenses. Some amount could have been given under the head of loss of consortium and loss of estate. Thus, the total amount of compensation could have been more than Rs. ten lakh. The Tribunal has granted an amount around Rs.9.5 lakh. The claimants have not filed appeal. In view of these circumstances, this Court holds that there is no possibility of interference in the decision of the Tribunal on the point of quantum of compensation.

20. On the point of liability of the Insurance Company, it needs to be mentioned that in the written statement itself respondent No.3 has admitted that the policy purchased was for third party risk. The office copy of Insurance Certificate is produced on record by the Insurance Company and it was Act policy, covering the statutory liability. The premium of Rs.160/- was basic premium for covering third party risk. No premium in respect of pillion rider was paid.

21. The Tribunal has referred the case of New India Assurance Co. V. Dharam Sing Bhai and Ors. reported as 2003 (2) T.A.C. 319 [Raj.] and the Tribunal has held that the pillion rider needs to be treated as third party. In this proceeding, the learned counsel for owner produced a copy of direction given by Insurance Registration and Development Authority dated 16.11.2009. In this direction given by the authority, it is made clear that if Standard Motor Package Policy (also called as Comprehensive Policy) is purchased, the risk to pillion rider of two wheeler and risk to occupant of private car needs to be covered. This direction is of no use in the present case as Comprehensive Policy was not purchased and it is only Act policy. The learned counsel for owner placed reliance on one case reported as 2011 ACJ 1415 (Delhi High Court) [Yashpal Luthra and Anr. Vs. United India Insurance Co. Ltd. And Anr.]. In this reported case, the policy purchased was Package/Comprehensive Policy and Insurance Company had admitted that the risk of pillion rider was covered under this policy. Thus, the facts were totally different. So, this case is of no use to the owner. On the aforesaid point, the learned counsel for Insurance Company placed reliance on the case reported as (2008) 7 Supreme Court Cases 428 [Oriental Insurance Company Limited Vs. Sudhakaran K.V. and Ors.]. The Apex Court has discussed the relevant provision, section 147 of the Act and the relevant observations are made at paragraph No.25 which are as under :-

"25. The law which emerges from the said decisions, is : (i) the liability of the insurance company in a case of this nature is not extended to a pillion-rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion-rider; (iii) the pillion-rider on a two-wheeler can not be treated as a third party when the accident

has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."

22. Thus, the position of law is settled on the point involved in the present matter. When the Tribunal decided the matter, this position was already settled in the case reported as AIR 2003 SC 607 [New India Assurance Co. Ltd. Vs. Asha Rani and Ors]. In view of the interpretation of the relevant provisions done by the Apex Court, this Court holds that the observations made in Dharam Sing's case referred above is of no help to the owner as it is on totally different point. This Court holds that interference is warranted in the judgment and award delivered by the Tribunal. Insurance Company cannot be made liable to pay the compensation and indemnify the owner.

23. The learned counsel for owner cited some reported cases on the point of transfer of insurance policy when vehicle is transferred. He submitted that the liability of Insurance Company continues after the transfer of the vehicle. This point was not pressed by the Insurance Company. Reliance was placed by the learned counsel for the owner on following cases.

(i) 1992 (2) T.A.C. 244 [G. Govindan Vs. New India Assurance Co. Ltd.],

(ii) AIR 2003 SC 2446 [Rikhi Ram Vs. Sukhrania],

(iii) AIR 2009 SCW 647 [United India Insurance Co. Ltd. Vs. Santro Devi and Ors.],

(iv) 1999 (3) T.A.C. 147 (HP) [Tilak Singh Vs. Shashi Bijulwan and Ors.],

(v) 2009 (3) T.A.C. 174 (Bom.) [Laxman Tikamdas Sippy and Anr. Vs. Omprakash Tulsidas Wadhwa and Ors.].

The respondent No. 3 did not seriously dispute the ownership of the vehicle and the Tribunal held that respondent No. 3 was owner of the vehicle at the relevant time. In view of these circumstances, the finding given as against the owner in respect of liability needs not be disturbed. In view of the aforesaid discussion, following order is made.

ORDER

- (i) The appeal of the Insurance Company is allowed with no order as to costs.
- (ii) The appeal of original respondent No.3owner stands dismissed.
- (iii) The judgment and award of Tribunal making the Insurance Company liable to pay compensation and indemnify the owner is hereby set aside. The Claimants are entitled to recover the compensation amount only from original respondent No. 3 - owner. The claim as against Insurance Company stands dismissed.
- (iv) Civil Application filed for production of document bearing No.4059/2014 is hereby allowed.
- (v) Civil Application No.352/2014 filed by the original claimants for permission to withdraw the amount stands rejected.
- (vi) The amount deposited by the Insurance Company is to be returned to Insurance Company.
- (vii) The Insurance Company is allowed to recover the amount of compensation, if any, already paid by it from original respondent No.3 with interest at the rate of which was given by Insurance Company.
- (viii) Award is to be prepared accordingly.