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Baby and Others Vs. Amin and Others

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Court : Mumbai Nagpur

Decided On : Aug-14-2015

Judge : A.P. Bhangale

Appeal No. : First Appeal No. 522 of 2004

Appellant : Baby and Others

Respondent : Amin and Others

Judgement :

Oral Judgment:

1. By this appeal, the appellants-claimants/legal representatives have sought to challenge judgment and award dated 12.3.2003, passed by learned Member of the Motor Accident Claims Tribunal, Yavatmal, in Motor Accident Claim No.18 of 1993, whereby the petition filed by the claimants/legal representatives of deceased Narayanrao Deogade was dismissed.

2. The facts of the case in a nut shell stated are thus:

On 21.5.1992, tractor having registration No.MH-29/B-256 and trolly attached thereto having registration No.8381 was proceeding to Chinchola from village Chikhalgaon. The deceased Narayanrao Deogade, the husband, the father, and son of appellants Nos.1 to 5 respectively, was travelling sitting in the trolly. When the tractor-trolly reached near village Gaurala, the driver could not control the

vehicle since it was in high speed, as a result of which there was a heavy jerk to the tractor-trolly. The deceased Narayanrao was thrown away and he fell on the road. Since Narayanrao received injuries, he died on the spot. He was 35 years old. At the time when accident in question took place, the offending tractor and trolly were insured with the Insurance Company covering the date of accident. The deceased Narayanrao was working as labourer-cum-conductor and earning Rs.1,200/- per month. He was sole earning member of the family. On that basis, though the appellants-claimants/legal representatives demanded Rs.3,00,000/- towards payment of compensation on account of loss of dependency, due to poverty they had restricted their claim to the tune of Rs.1,50,000/-.

3. The respondent No.4 " The National Insurance Company Limited and respondent No.5 " United India Insurance Company Limited, in respect of the offending vehicle tractor-trolly, resisted the claim petition on the ground that they were not liable to pay any compensation to the claimants.

4. Learned Member of the Tribunal, in the judgment and award impugned in this appeal, held that deceased Narayanrao succumbed to injuries caused to him because of rash and negligent driving by the driver of the tractor-trolly. However, learned Member of the Tribunal refused to grant payment of compensation on the ground that the persons, including deceased Narayanrao, travelling in the offending motor vehicle tractor-trolly were of a marriage party persons. It was further held that when admittedly the use of tractor-trolly was for the purposes of agricultural only, it could not have been used for other purposes. Thus, learned Member of the Tribunal dismissed the petition for grant of payment of compensation on the pretext that there was breach of conditions of Policy with respect to offending motor vehicle tractor-trolly.

Hence, the appellants-claimants/legal representatives are before this Court.

5. Learned counsel for the appellants-claimants/legal representatives submits that when learned Member of the Tribunal found that the offending motor vehicle tractor-trolly is driven rashly and negligently and as a result of which deceased Narayanrao died on the spot, it was essential for learned Member of the Tribunal to determine and award just and reasonable compensation payable to the

appellants-claimants/legal representatives of deceased Narayanrao. Learned counsel further submits that the Insurance Companies for both tractor and trolly (offending motor vehicles) are responsible jointly and severally along with owner/driver of the said tractor-trolly to pay the compensation to the dependents of deceased Narayanrao. Learned counsel contended that at the interim stage payment of compensation was ordered under Section 140 of the Motor Vehicles Act, 1988 and learned Member of the Tribunal, therefore, failed to appreciate the legal position regarding alleged breach of conditions of Policy and casually proceeded to dismiss the claim petition for grant of compensation. It is further contended that since the Insurance Companies concerned have not led their evidence, there was nothing to show that there was breach of conditions of Policy.

6. Learned counsel for respondent No.4 - The National Insurance Company Limited in respect of the offending motor vehicle tractor vehemently opposes the arguments advanced by learned counsel for the appellants. He has made reference to the ruling in the case of **National Insurance Co. Ltd. ..vs.. Swaran Singh and others**, reported at **2004 (91) AIR 1531** to argue that it was the liability of the Insurance Company to pay just and proper compensation in the facts and circumstances of the case and such Insurance Companies may recover the amount paid towards compensation if according to insurers they are not exclusively liable to compensate the dependents of the victim of the motor vehicle accident.

7. In this case, the reason mentioned by learned Member of the Tribunal that the offending motor vehicle tractor-trolly was used for marriage party is not only wrong but also baseless as it is unsupported by any evidence on record. If the Insurance Companies think it proper that they are not liable to pay compensation to the victim of the motor vehicle accident as the conditions of Policy are breached, the same must be substantially proved by adducing evidence before the Tribunal. If, according to the Insurance Companies, the offending motor vehicle tractor-trolly was used for hiring purposes, there should have been some evidence of the driver/owner of the offending motor vehicle to believe such contention but no evidence was adduced by the respondents. Therefore, in the facts and circumstances of the case, when the Insurance Policies were valid as on the date

of accident, the appellants-claimants/legal representatives were entitled to payment of compensation and the Insurance Companies were liable to pay the compensation with liberty to the Insurance Companies to recover it from the owner/driver of the offending motor vehicle in case according to them they are not liable to pay the compensation to the claimant of the victim of the motor vehicle accident.

8. Considering the submissions at the bar, it must be accepted, in view of the finding of the first issue framed by learned Member of the Tribunal, that the offending motor vehicle tractor-trolly was driven rashly and negligently and as a result of which deceased Narayanrao met with the fatal accident resulting into death on the spot.

9. Learned counsel for the appellants-claimants/legal representatives placing reliance in the case of **Sarladevi and others ..vs.. Divisional Manager, M/s. Royal Sundaram Alliance Ins. Company Limited and another**, reported at **2014 (19) SCALE 431** argued that the legal position is stated to determine just and reasonable compensation on account of loss of dependency, loss of funeral expenses, loss of estate, loss of consortium, and loss of love and affection etc.. Accordingly, it is submitted that in the present case the deceased Narayanrao was earning sum of Rs.1,200/- per month. If prospective future interest of 50% of his monthly income is added to in his income, the figure comes to Rs.1,800/- per month. Thus, annual income of deceased Narayanrao can be determined as Rs.21,600/- (Rs.1800/- per month income x 12 months). Considering the age of deceased Narayanrao as 35 years, appropriate multiplier applicable in the facts and circumstances is 16. Therefore, the compensation amount comes to Rs.3,45,600/- (Rs.21,600/- annual income x 16 multiplier). The deduction of 1/5th income towards notional self expenses of deceased Narayanrao, which may have spent for himself, is Rs.69,120/- (1/5 of the total compensation). Thus, deducting the self expenses, the figure comes to Rs.2,76,480/-. Learned counsel further submits that on account of funeral expenses in the sum of Rs.5,000/-, loss of love and affection in the sum of Rs.50,000/-, loss of estate in the sum of Rs.10,000/-, loss of consortium for widow in the sum of Rs.10,000/- total compensation claimed by the appellants-claimants/legal representatives is in the sum of Rs.3,51,480/-

together with interest at the rate of 7.5 per cent from the date of filing of the claim petition till the date of realization of the payment. The claim appears just considering age, occupation, family background etc. of deceased Narayanrao.

10. Having heard the submissions of learned counsel for the rival parties and the rulings cited (supra), the total compensation calculated and submitted as above is just and reasonable compensation which is payable in the facts and circumstances of the case to the appellants-claimants/legal representatives of deceased Narayanrao who died in the motor vehicle accident. That being so, the impugned judgment and order passed by learned Member of the Tribunal deserves to be quashed and set aside. Hence, this Court passes the following order:

ORDER

1) The first appeal is hereby allowed.

2) The impugned judgment and award dated 12.3.2003, passed by learned Member of the Motor Accident Claims Tribunal, Yavatmal, in Motor Accident Claim No.18 of 1993 is quashed and set aside.

3) Respondent Nos.4 and 5 are jointly and severally liable to compensate the appellants-claimants/legal representatives of deceased Narayanrao in the sum of Rs.3,51,480/- together with interest at the rate of 7.5 per cent from the date of filing of the claim petition till the date of realization of the payment.

4) The Tribunal concerned shall execute the award accordingly.

5) If the amount is deposited in this Court, the same be sent back to the Tribunal concerned for its disbursal.

6) The amount withdrawn so far towards payment of compensation by the appellants-claimants/legal representatives shall be adjusted in the amount of total compensation.

The appeal is allowed in aforesaid terms with costs.

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