IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 746 OF 2014

Madan Raghu Akware and another .. Appellants

Versus

Mehmoona Haji Mehmood and another .. Respondents

Shri Shrikant S. Patil, Advocate for Appellants.
Shri S. V. Kulkarni, Advocate for the Respondent No. 2.

CORAM : S. V. GANGAPURWALA, J.
DATE : 06TH OCTOBER, 2015.

PER COURT :

. Present appellants had file application for compensation U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act"). The said application is allowed as against the present respondent No. 1. The present respondent No. 2 is exonerated. The claimants have filed the present appeal for enhancement as well as against the order exonerating the Insurance company.

2. Mr. Patil, the learned counsel for appellants submits that, the deceased was travelling as a non fare paying passenger in the truck. He was doing business of grocery goods. He was going for purchase of goods as a non fare paying passenger in the truck. The insurance policy was a package policy. It also covers non

fare paying passengers. Additional premium was paid for non fare paying passenger. The learned counsel submits that, the insurance company could not have been exonerated in view of the terms of the policy. The learned counsel further submits that, the deceased was doing business. However, the Tribunal only considered Rs. 2,000/- per month as income. At least notional income of Rs. 3,000/- per month ought to have been considered. According to the learned counsel even the appellants would be entitled for non pecuniary damages as laid down by the Apex Court in a case of **Asha Verman and others Vs. Maharaj Singh and others** reported in ***2015 All SLR 1476***.

3. Mr. Kulkarni, the learned counsel submits that, the deceased was travelling as a passenger in the goods vehicle. As such, the insurance company is rightly exonerated. It is a case of breach of policy. According to the learned counsel no liability can be fastened on the insurance company. The learned counsel in alternate submits that, in event this Court comes to the conclusion holding the insurance company also liable to pay the amount then, the order of pay and recover be passed. The learned counsel relies on the judgment of the Apex Court in a case of **Manager, National Insurance Co. Ltd. V/s Saju P. Paul** reported in ***2013 AIR SCW 609***.

4. I have considered the submissions, evidence and the policy.

5. The appellants had come forward with the case that, the deceased Anil was travelling as a non fare paying passenger in the truck. The said evidence is not rebutted by the respondents. Additional premium in respect of non fare paying passenger is also paid. The policy in question is a package policy. The said fact is accepted by the learned counsel for the insurance company also.

6. Considering the aforesaid conspectus of the matter that additional premium for non fare paying passenger is paid, no evidence is led explaining the payment of the premium for non fare paying passenger. The insurance policy being a package policy and the deceased being the gratuitous non fare paying passenger, the insurance company ought not have been exonerated.

7. The notional income of Rs. 3,000/- per month could have been considered. The deceased was a bachelor, as such deduction towards personal expenses will have to be made as half. The multiplier of 17 would be applicable considering age of the deceased as 25 years. As such, for loss of dependency the claimants would be entitled for Rs. 3,06,000/- The appellant No. 2 is dead. As the appellant No. 2 is dead, I would not award any amount on account of the loss of love and affection. Considering the date of accident is of 2000 I would award an amount of Rs.

25,000/- to the appellant No. 1 towards loss of love and affection and Rs. 10,000/- towards funeral charges. As such, the claimants would be entitled for total compensation of Rs. 3,41,000/-

8. In the result I pass the following order-

9. The award passed by the Tribunal is modified. The present respondent Nos. 1 and 2 are jointly and severally liable to pay an amount of Rs. 3,41,000/- along with interest at the rate of Rs. 7% per annum from the date of petition till realization. First appeal accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15