

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL ST.NO.25846 OF 2014

ICICI Lombard General
Insurance Co.Ltd.
Through its Legal Officer
Mr Rahul Sanap,
Age 29 years, Occu. Service,
R/o C/o ICICI Lombard General
Insurance Co.Ltd., Alaknanda,
1st Floor, Adalat road,
Aurangabad

..Appellant

Versus

1. Radhabai Manikrao Joshi
Age 70 years, Occu. Household,
2. Subhash Manikrao Joshi,
Age 48 years, Occu. Legal
Practice,

Respondents No.1 and 2
R/o Balapur road, Dharmabad,
Taluka and District Nanded

[Original claimants]

3. Birappa Gangaram Madnurkar,
Age 37 years, Occu., Agril.,
R/o Ratnali, Dharmabad,
District Nanded

[Orig.respondent No.1]
..Respondents

Mr S.S. Patil, Advocate for applicant
Mr V.V.Bhavthankar, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 20th March 2015

PER COURT

1. As the Civil Application No.368 of 2015 for condonation of delay is allowed, by consent, this appeal is taken up for final disposal at the stage of admission.

2. The Motor Accident Claims Petition No.14/2013 came to be filed by respondents No. 1 and 2 seeking compensation in the matter of death of one Manikrao who expired in an accident dated 12th January 2013. The claim was made under Section 166 of the Motor Vehicles Act. Learned Member, Motor Accident Claims Tribunal at Biloli allowed the claim and directed the appellant-plaintiff to pay amount of Rs.4,38,660/- to the claimants along with interest at the rate of 9% per annum, as such the present appeal.

3. Learned Counsel for the appellant - Insurance Company, while questioning the legality and validity of the claim answered by the learned Tribunal has pressed into service two contentions, (a) that the liability fastened upon the present appellant - Insurance Company in regard to Vehicle No.MH-26-AE-3605 ought not to have been considered to be established in the light of the background that the vehicle was implanted at later point of time; (b) The multiplier applied in the present case, having regard to the age of the deceased Manikrao, who was above 70 years, is incorrect and there should have been a lump-some payment.

4. If both these contentions are considered in the light of the findings recorded by the learned Tribunal, it is required to be noted that the claimants examined the claimant No.2 Subhash at Exh.22 whereas the appellant herein has examined Advocate, Bhagwan Kadam, an Investigator at Exh.44 so as to establish that the vehicle was implanted and the vehicle named in the claim petition is not real one.

5. So far as the vehicle owner is concerned, neither he has examined himself nor anybody has entered on his behalf in witness box.

6. The case of the claimants was that the vehicle in question came from opposite direction which was being driven in a rash and negligent manner at a very high speed, gave dash to late Manikrao, who fell unconscious on the spot.

7. Subsequently, he was admitted in hospital at Nanded where succumbed to his injuries on the next day. The F.I.R. Exh.23, Spot Panchanama Exh.24, Inquest Panchanama Exh.25, Post Mortem report Exh.26, copy of registration book and death certificate Exh.29 were duly proved before the learned Tribunal. Learned Tribunal has proceeded to examine the contents of the said documentary evidence and noted that the rider of the offending vehicle gave dash to the deceased resulting into his death in the hospital. The statement of Motorcyclist at Exh.32 justifies the involvement of said vehicle in the accident. The learned Tribunal, in the light of spot panchanama at Exh.24, the statement of the rider at Exh.32 and the investigation papers of the matter in question has recorded finding that the vehicle in question has caused the death of Manikrao. The evidence of the investigator Mr Kadam was also analyzed by the Tribunal. The Tribunal noticed that the said investigator conducted investigation in the matter and submitted his report Exh.45. The said investigator, in his report stated that the vehicle which gave dash to Manikrao, was not identified. According to said investigator, the vehicle that was

involved in the accident was MH-26-Q-706. The testimony of the said witness has been duly taken into account and analyzed by the Tribunal and has given finding that the accident has occurred because of rash and negligent driving of the offending vehicle, i.e. Vehicle No.MH-26-AE-3605 and not MH-26-Q-706.

8. So far as the above referred analysis of the Tribunal is concerned, learned Counsel for the appellant, at this stage would try to urge that the implantation of the vehicle can be ascertained from the evidence of said investigator.

9. If the said submissions are analyzed in the light of the observations made by the Tribunal, as noted by this Court, it was expected of the said investigator or the appellant herein to bring the said fact to the notice of investigation agency, if required by filing separate F.I.R. against the vehicle owner with a case of alleged fraud. Learned Counsel for the appellant when confronted with the above referred position, he submits that the said fact was brought to the notice of investigation agency, however, no separate F.I.R. was lodged in the said case.

10. In view of the above referred conduct of the appellant, in the opinion of this Court, no fault can be noticed in the finding recorded by the Tribunal as regards involvement of Vehicle No.MH-26-AE-3605 in the accident in question.

11. While considering the claimants' claim, the Tribunal has taken into account the age of the deceased which was admittedly above 70

years who was getting pension. So far as the contention of the appellant that the respondent No.1, who is wife of late Manikrao will be entitled for family pension and in view thereof, a lump-some amount should have been ordered by the Tribunal is concerned, the Tribunal was alive to the fact as regards the age of Manikrao.

12. Learned Tribunal, while dealing with the said aspect has taken into account the earning of the deceased which was quantified as Rs.9466/- per month and after having deducted the personal expenses of the deceased, reached to conclusion that the annual income of the deceased, of which share to the family was to the tune of Rs.75,732/-. The Tribunal. having regard to the age of deceased Manikrao has applied multiplier of `5'. So far as application of multiplier of `5' in the present case is concerned, it speaks voluminous about the awareness of the age of the deceased by the Tribunal. In that view of the matter, no case for interference is made. Appeal, which lacks merits, stands dismissed.

13. At this stage, learned Counsel for the claimants has urged that the amount be transferred to learned Motor Accident Claims Tribunal in view of dismissal of appeal, it would be appropriate to transmit the amount to the Tribunal. As such, Registrar of this Court is directed to transmit the amount deposited by the appellant – Insurance Company, to the Motor Accident Claims Tribunal at Biloli.

(N.W. SAMBRE, J.)

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