IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.201 OF 2015

Royal Sundaram Alliance Insurance Co. Ltd. ... Appellant

Vs.

Sarika Tanaji Ghatage & Ors. ... Respondents

Mr.A.P. Kulkarni for the Appellant
Mr.S.A. Rajeshirke for Respondent No.1

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **19th AUGUST, 2015**

P.C.:

1. Heard.

2. Admit. By consent of the parties, the Appeal is called out forthwith and heard finally. R & P is not required as the learned Counsel for the parties have assisted the Court in respect of documents and moreover, the challenge given in this Appeal is based on quantum, especially about the earning of the deceased.

3. By this Appeal, the appellant/Insurance company has challenged the judgment and award dated 20.8.2013 passed by the Chairman, Motor Accident Claims Tribunal, Sangli, thereby awarding a compensation of Rs.21,85,000/- with 7.5% p.a. interest.

4. Respondent No.1 is the wife of the deceased Tanaji Ghatage and Respondent Nos.2 to 5 are the children of the deceased and Sarika, the respondent-wife of the deceased. Respondent No.6 is a driver and Respondent No.7 is the owner of the offending vehicle. The deceased Tanaji had met with an accident on 12.3.2010. At the relevant time, he was driving the truck owned by him. He died in the accident and hence, the claim was made for compensation on the ground that the accident took place because of the rash and negligent driving of the vehicle No.TN-29/AC-5251 i.e., the truck driven and owned by Respondent Nos.6 and 7. A claim was made for Rs.31 lacs by the original applicants. It was claimed that the deceased Tanaji was an owner of two trucks. A driver was employed for one truck and the other truck was driven by Tanaji himself. Out of these two trucks, a monthly income of Rs.50,000/- was claimed. Applicant No.1 wife of Tanaji entered the box and gave evidence on the point of earning and after considering the documents and the evidence; so also the defence taken by the insurance company, the claim was partly allowed by the Tribunal.

5. The learned Counsel for the appellant Insurance company submitted that the learned Chairman of the Tribunal has considered the notional income of the deceased Tanaji on a very higher side. He submitted that the

Tribunal has erred in holding income of Rs.4,000/- out of one truck. Deceased Tanaji used to pay Rs.8,000/- for one truck to the driver used to drive one truck and therefore, the amount of Rs.8,000/- was considered as earning by way of savings for the other truck as Tanaji himself used to drive the other truck. The learned Counsel submitted that the amount of Rs.4,000/- which is considered as his income, is baseless and, therefore, the Tribunal has wrongly fixed monthly income of Tanaji @ Rs.16,000/-.

6. The learned Counsel for the original complainant/applicant has opposed the appeal. He has supported the impugned judgment. He submitted that the amount of Rs.4,000/- as earning from one truck was in fact accepted by the insurance company and accordingly it is noted down in the judgment. The learned Counsel read over the said portion in the judgment. He submitted that as it was his income out of one truck, the same was rightly considered for the other truck.

7. The point of determination is as follows:

> "Whether the amount of award passed by the learned Chairman, Motor Accident Claims Tribunal is excessive?"

8. Perused the impugned judgement. The amount paid to driver as his salary at Rs.8,000/- is based on evidence of the wife of the deceased; so also on the judgment of the Bombay High Court in **First Appeal No.1055**

of 2012 in *Iffco Tokio General Insurance Company Limited vs. Shri Dastagir H. Dange and anr.* The Tribunal has considered Rs.4,000/- as monthly income out of driving the truck, though no document is produced to show that he was earning Rs.4,000/- from one truck, I am of the view that the Tribunal has taken an overall view in respect of the earning Rs.4,000/-, which cannot be considered as on the higher side. The same amount is considered as income from the second truck and as the deceased himself was driving the second truck, the amount of Rs.8,000/- which was paid as salary to the driver of one truck is naturally considered as a saving and thus, the amount of Rs.16,000/-, which is fixed as a monthly income of the deceased is adequate and appropriate. The other deductions and multiplier, which are considered by the learned Tribunal cannot be faulted with.

9. Therefore, the amount granted under the impugned award, I find is adequate, just and proper. Hence, the appeal is dismissed.

(MRIDULA BHATKAR, J.)