IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1455 OF 2014

1. Maherajbee Yakub Shah,
Age : 48 years, Occu. Housework

2. Mahemubsha Yakub Shah
Age : 30 years, Occu.

3. Nashirkha Yakub Shah
Age : 28 years, Occu.

4. Rijwan Yakub Shah
Age : 23 years, Occu.

5. Ramjansha Yakub Shah
Age : 21 years, Occu.

6. Farjanabi Yakub Shah
Age : 19 years,

All R/o. Wadjai Road,
Dhule, District Dhule. … Appellants
(Orig. Petitioners)

Versus

1. M/s Jigar Agency
Prop. Nitinbhai Bacchubhai Patel
Age : Adult, Occupation-Container Owner,
R/o. Madhuvan Tiles,
Post - Chikhali, Navsari,
Dist. Navsari (Gujrath)

2. United India Insurance Co. Ltd.
Notice be served on the Manager,
Branch Officer, Dhule,
District Dhule. … Respondents
(Orig. Opponent Nos. 1 and 2)

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Advocate for the appellants : Mr. Mukul S. Kulkarni
Advocate for respondent No.2 : Mr. S. R. Bagal

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CORAM : V. K. JADHAV, J.
DATED : 3rd MAY, 2016

ORDER:-

1. Being aggrieved by the judgment and award dated 15.1.2009 passed by learned Member, M.A.C.T. Dhule, in M.A.C.P. No. 891 of 2006, the original claimants have preferred this appeal to the extent of quantum.

2. Brief facts, giving rise to the present appeal, are as under:-

3. On 27.5.2006 deceased Yakub along with his wife and other relatives were going to Surat from Dhule by a tanker bearing registration No. GJ-16-U-7151. On way within the limits of village Tamaswadi, one container bearing registration No. GJ-15-X-3303 coming from Surat side, gave dash to the tanker. It is alleged that driver of the said container was driving his vehicle in high speed and in rash and negligent manner and caused the accident. In consequence of which, deceased Yukub, tanker driver and Nasrinbee died on the spot whereas 12 persons sustained injuries in the accident. At the time of death, deceased Yakub was earning Rs.4000/- p.m. by doing labour work and all claimants were depending on his earning. Thus, the legal representatives of deceased Yakub preferred M.A.C.P. No. 891 of 2006 for grant of compensation under various heads. Respondent No. 1 was duly

served, however, he remained absent and therefore, the claim petition ordered to be proceeded in his absence. Respondent No.2-insurer strongly resisted the claim petition by filing written statement on the ground that driver of the container was not holding valid and effective driving licence at the time of accident. It is also contended that the accident occurred due to rash and negligent driving on the part of driver of the tanker, and driver of the contained was not at fault. Further, the income and age of deceased Yakub is also disputed. Learned Member of the Tribunal, by its impugned judgment and award dated 15.1.2009, partly allowed the claim petition. Respondent No.1 is directed to pay compensation of Rs.1,09,000/- with interest @ 7.5% p.a. from the date of filing of petition till realization of the amount. The claim petition as against respondent No.2-insurer is dismissed. Aggrieved by the same, this appeal is preferred by the original claimants.

4. Learned counsel for the appellants-original claimants submits that the Tribunal has erroneously exonerated respondent No.2-Insurer from the liability to pay compensation. Admittedly, deceased Yakub, along with his family members, was travelling in the vehicle tanker and said tanker is not insured with respondent No.2-insurer. Furthermore, owner and driver of the said tanker are not impleaded as party to the claim petition. The Tribunal has recorded a finding in

affirmative and thereby held that the accident occurred on account of rash and negligent driving of driver of the container, and driver of the tanker was not at fault. Respondent No.2-insurer has not preferred any appeal nor filed any cross objection in this appeal. In view of the above legal position, there is no question of breach of conditions of policy and the Tribunal, by incorrectly placing reliance on the decision of this Court in the case of ***United India Insurance Company Ltd. vs. Anubai Gopichand Thakare and others,*** reported in ***2008 (1) Mh.L.J.***, exonerated respondent No.2- insurer. Learned counsel submits that the Tribunal has not considered proper notional income of deceased Yakub in absence of any income proof. The Tribunal has considered the notional income of deceased at lower side. The Tribunal ought to have considered his notional income as Rs.3000/- p.m. at least. Learned counsel submits that the Tribunal has awarded very meager amount under the heads of non pecuniary loss.

5. Learned counsel for the respondent-insurer submits that since the owner has not preferred any appeal, the respondent-insurer may be directed to pay the compensation and recover it from respondent No.1. The Tribunal has rightly exonerated respondent-insurer from the liability to pay compensation. Deceased Yakub along with his family members, was travelling in the said vehicle tanker

unauthorizedly and illegally. Passengers cannot travel in goods vehicle and in that view, the respondent-insurer, though the another vehicle container is insured with it, is not liable to pay compensation to the persons who were illegally travelling as passengers in a goods vehicle. Learned counsel submits that considering the notional income, age and other factors, the Tribunal has awarded just and reasonable compensation and there is no substance in the appeal and the appeal is, thus, liable to be dismissed.

6. So far as the vehicle tanker is concerned, the tanker owner and driver are not impleaded as party to the claim petition. Furthermore, the Tribunal has also recorded a finding to the effect that driver of the container alone is responsible for the accident. The said finding is not challenged by respondent-insurer. The appellants claimants however, can raise this ground in appeal if at all the Tribunal has erroneously exonerated the respondent-insurer from the liability to pay compensation. The Tribunal, while exonerating respondent insurer from the liability to pay compensation, has placed its reliance on the case of ***United India Insurance Company Ltd. vs. Anubai Gopichand Thakare and others*** (supra) decided by this Court, wherein, this Court has relied upon the decision of the Apex Court in the case of ***Dr.T.V.Josh vs. Chacko P.M. alias Thankachan and others***, ***(2001) 8 S.C.C. 748***. However, learned

counsel for both the parties admit that above two cases deal with some other questions, and the facts and circumstances of the present case are altogether different. Thus, the ration laid down in the aforesaid judgments cannot be made applicable to the facts and circumstances of this case. It is thus clear that respondent No.2-insurer is jointly and severally liable to pay compensation amount under the contract of insurance.

7. The Tribunal has considered the notional income of deceased Yakub as Rs.1500/- per month. In absence of any income proof, the Tribunal ought to have considered his notional income as Rs.3000/- per month. After deducting 1/3rd of his income towards personal expenses, Rs.2000/- per month, corresponding to Rs.24,000/- per year, would be the loss of income/dependency. Considering the age of deceased, as admitted by claimant No.1 in her cross examination, multiplier 7 would be the appropriate multiplier in this case. The interest would be @ 9% per annum.

8. In view of this, if the annual loss of income of Rs.24,000/- is multiplied by 7, total compensation comes to Rs.1,68,000/-. The appellants-claimants are entitled for the same. It also appears from the impugned judgment and award that the Tribunal has awarded meager amount towards loss of consortium, loss of estate, funeral

expenses etc. It would be just and proper to award Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses.

9. In view of this, the breakup of compensation, which can be broadly categorized as under:-

I)	Loss of income/dependency	Rs.1,68,000.00
II)	Loss of consortium	Rs. 10,000.00
III)	Loss of estate	Rs 10,000.00
IV)	Funeral expenses	Rs. 5,000.00

		Total Rs. 1,93,000.00

Thus, the claimants are entitled to Rs.1,93,000/- (Rupees one lac ninety three thousand only) as compensation. Respondents Nos. 1 and 2 both, are jointly and severally, liable to pay the compensation.

10. In view of the above, I proceed to pass the following order:-

O R D E R

I. The First Appeal is allowed with proportionate costs.

II. The judgment and award dated 15.01.2009 passed by the Member, MACT, Dhule in MACP No. 891 of 2006, is modified in the following manner:-

"Respondent Nos. 1 and 2 i.e. the owner and the insurer respectively, shall pay Rs.1,93,000/- to the appellants/claimants with interest @ 9% p.a. form the date of filing of petition till realization of entire amount. Compensation amount of R.1,93,000/- is inclusive of N.F.L. amount.

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up in tune with the above modification.

V. The appeal is accordingly disposed of.

(V. K. JADHAV, J.)

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