

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1401 OF 2013

The Divisional Manager,
Bajaj Alliance General Insurance Co.

... Appellant

vs.

Smt. Leelabai Krishna Ghadage & ors.

... Respondents
Claimants/ Driver's heir

Mr. M. M. Sathaye, Advocate for the appellant.

Mr. Rvai P. Kadam, Advocate for respondents No.1 to 3.

Coram : Smt. R. P. SondurBaldota, J.

Date : 22nd March, 2016.

P. C. :

1. This appeal by the Insurance Company is to challenge the award dated 5th May, 2012, by which the Motor Accident Claims Tribunal, Satara awarded compensation in the sum of Rs.13,55,424/- to the respondents with interest at the rate of 6% per annum from 9th December, 2009 till realization. Respondent no.1, who is the widow of the deceased is directed to be paid Rs.8,00,000/- and the balance amount is to be equally distributed amongst respondents no.2 and 3, who are the sons of the deceased.

2. Mr. Sathaye, the learned advocate for the appellant submits that the Tribunal has erred in not considering breach of the Insurance Policy in as much as the driver of the vehicle was at the relevant time not carrying his licence. He submits that though the fact is not stated in the F.I.R. (Exh.64), the Investigating Officer in his evidence has admitted that the driver was not carrying the licence and has further stated that this fact remained to be mentioned in the charge-sheet. The Tribunal has disbelieved this evidence of the witness for the reason he had not made any personal enquiry about the fact. As such he had no personal knowledge of the fact. It has held that in the ordinary course of events Section 181 of the Motor Vehicle Act, would be complied with and the fact that the driver was not at the relevant time carrying the licence is not mentioned in the charge-sheet is sufficient to discredit this part of the deposition of the witness.

3. The next submission of Mr. Sathaye is about the quantum of compensation awarded. The deceased was working with the Dhom Dam as a Watchman on the salary of Rs.9,493/- per month. The respondents had claimed that he had additional yearly income of Rs.1,50,000/- from the agricultural land and milk business. This claim is rejected by the Tribunal for want of satisfactory evidence. As regards the evidence of the claimants on

the salary of the deceased there is no challenge to the same by way of cross-examination. The Tribunal has observed that in the absence of cross-examination the fact can be said to be undisputed and unchallenged and has calculated the multiplicand on the basis of income of Rs.6,329/- per month after deduction towards his personal expenses. It has then employed the multiplier of '11' which relevant for the age of the deceased and calculated the compensation at Rs.8,35,428/- loss of dependency. The Tribunal has awarded compensation of Rs.13,55,427/- to the respondents. The Tribunal also awarded Rs.5,00,000/- towards the medical expenses of the deceased for which the necessary bills were produced.

4. The other ground of challenge by the appellant to the impugned award is based on the cause of death of the deceased. The accident had taken place on 12th March, 2009. The death of the deceased took place at his residence on 16th May, 2009. The appellant points out that the post-mortem report dated 26th May, 2009 shows that the death of deceased was on account of "Septicemia, Bed Sores, Bronchopneumonia with generalised debility" to submit that the death cannot be said to be the direct result of accident. One of the objections of the appellant was to the facts of death of the deceased. The record shows that the injuries

sustained by the deceased were to his head and to the brain. He was in the hospital for about two months i.e. until 16th May, 2009. The cause of death stated in the post-mortem report is consistent with the injuries sustained in the accident. It therefore cannot be said that the death was not on account of the injury sustained in the accident. Thus, there is no merit whatsoever in the appeal. The appeal is, therefore, dismissed.

[Smt. R. P. SondurBaldota, J.]