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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.31258 OF 2012
WITH
CIVIL APPLICATION NO.3671 OF 2016
IN
FIRST APPEAL (ST) NO.31258 OF 2012.

The New India Assurance Co.Ltd and anr Appellant
V/s.

Smt. Reenadevi Jageshwar @
Jageshwarkumar Rai
@ Yadav and others Respondents

WITH
CIVIL APPLICATION NO.3672 OF 2016
IN
FIRST APPEAL (ST) NO.31258 OF 2012

Smt. Reenadevi Jageshwar @ Jagshwarkumar
Rai @ Yadav applicant.

In the matter of

The New India Assurance Co.Ltd and anr Appellant
V/s.

Smt. Reenadevi Jageshwar @
Jageshwarkumar Rai
@ Yadav and others Respondents

Ms. Poonam Mital, for the Appellants.
Ms. R.S. Chahal, for respondent No. 1 to 3.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th OCTOBER, 2016.

P.C. :

1. Heard learned counsel for both parties.
2. Admit.
3. With the consent of appellant and respondent claimants, appeal is heard finally at the stage of admission as the issue involved in the appeal is very short one.
4. Notice to respondent No.4 the owner of offending vehicle is dispensed with considering that no relief as such is being pressed against him. Even otherwise, learned counsel for appellant makes statement that substituted service of notice of appeal was made on respondent No.4 by publication in the newspaper. However, respondent No.4 is not appearing in the appeal.
5. The only contention raised in this appeal, which is directed against the judgment and award dated 20th October, 2011, passed by Motor Accident Claims Tribunal, Thane, in M.A.C.P. No.444 of 2009, that the learned Tribunal has not deducted 1/3rd amount towards personal expenses of the deceased from his income and secondly there was no evidence showing that deceased at the time of accident was driver of the rickshaw and earning salary of Rs.3,000/- per month as held by the Tribunal.

6. However, the evidence on record clearly goes to show that at the time of accident, the deceased was driving the rickshaw. The evidence on record, as discussed by the trial Court in paragraph No.7 of its judgment reveals, that the widow of the deceased has stated that her husband was driving rickshaw and getting salary of Rs.4,000/- per month.

7. In view thereof, as no rebutting evidence has come on record, it has to be held that the Tribunal has rightly accepted that deceased was driving rickshaw and his notional income was to the tune of Rs.3,000/- per month, in the absence of any evidence relating to his actual salary of Rs.4,000/- as claimed. However, as rightly pointed out by learned counsel for appellant, the Tribunal has not deducted 1/3 of the income of the deceased towards his personal expenses and has directly calculated the amount of compensation at the rate of Rs.3,000/- per month applying multiplier of 17.

8. In view thereof, after deducting 1/3rd amount from the income towards personal expenses of the deceased, it has to be held that loss of dependency comes to Rs.2,000/- p.m. x 12 x 17 = Rs.4,08,000/-.

9. At this stage, as rightly pointed out by learned counsel for respondent claimants the Tribunal has awarded Rs.2,000/- only towards funeral expenses which needs to be enhanced to Rs.25,000/-. Moreover, the Tribunal has also not awarded any amount towards loss of consortium to the widow, which needs to be awarded to the tune of Rs.1,00,000/-. Similarly amount of Rs.50,000/- is required to be awarded to the parents of the deceased towards loss of companionship, which the Tribunal has not done.

10. Accordingly, after adding amount of Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.50,000/- towards loss of companionship to the parents, total compensation amount comes to Rs.5,83,000/-. The impugned judgment and award as passed by trial Court is accordingly modified to the tune of Rs.5,83,000/- instead of Rs.6,14,000/- as ordered by the Tribunal.

11. In view thereof, the Tribunal to pay to the respondent claimants amount of Rs.5,83,000/- with proportionate interest thereon at the rate of 8% per annum from the date of petition, filed before the Tribunal, till the realization.

12. Excess amount, to be returned to appellant- Insurance Company with the proportionate interest thereon.

13. The appeal is disposed of above in above terms.

14. In view of disposal of First Appeal itself Civil Application Nos.3671 of 2016 and 3672 of 2016 are disposed of.

[DR. SHALINI PHANSALKAR JOSHI, J.]