

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

C.A.F. NO.1944/2016
IN
FIRST APPEAL STAMP NO.11505/2016

ICICI Lombard General Insurance Co. Ltd.,
 through its Manager (Legal) Shri Ashay
 Mahajan, having its registered office at
 5th Floor, Landmark Building, Plot No.56,
 Wardha Road, Ramdaspath, Nagpur.

..Applicant/appellant.

..Vs..

1. Shri Avdhoot Rajaramji Wadhonkar,
aged 43 Yrs., Occu. Labourer.
2. Master Jagdish s/o Avdhoot Wadhonkar,
aged 17 Yrs., Student.
3. Miss Neha d/o Avdhoot Wadhonkar,
aged 14 Yrs., Student.

Non-applicants 2 and 3 being minor
 through their natural guardian i.e.
 respondent No.1
 Respondent Nos.1 to 3 are the resident
 of Pimpalkutha, Tah. and Distt. Amravati.

4. Shri Pravin s/o Haribhau Alone,
age adult, Occu. Private Service.
5. Shri Swapnil s/o Haribhau Alone,
age adult, Occu. Private Service.

Non-applicants 4 - 5 are the
 R/o Harshraj Colony, V.M.V. Road,
 Tq. and Distt. Amravati.

..Non-applicants/respondents.

 Shri R.D. Bhuibhar, Advocate for the applicant/appellant.
 Shri P.R. Agrawal, Advocate for non-applicant/respondent Nos.1 to 3.

CORAM : Z.A.HAQ, J.
DATED : 15.9.2016.

ORAL JUDGMENT

Heard Shri R.D. Bhuibhar, Advocate for the applicant/appellant and Shri P.R. Agrawal, Advocate for the non-applicant/respondent Nos.1 to 3.

Accepting the reasons stated in the application, which are not controverted, the delay of 127 days in filing the appeal is condoned. The civil application is **allowed**.

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2. Taken up for hearing.

ADMIT.

The learned Advocates for the appellant and the respondent Nos.1 to 3 - claimants submit that only point involved in the appeal is whether the Tribunal has committed an error by not deducting 1/3rd of the amount of compensation determined by it for the personal expenses of deceased. The learned Advocates have submitted that the matter can be disposed and there is no requirement of calling the record and proceedings. The appellant - Insurance Company has not challenged the finding recorded by the Tribunal that the Insurance Company is liable to pay the amount of compensation. In these facts, the appeal is taken up for hearing in the absence of the respondent Nos.4 and 5 i.e. driver and owner of the vehicle involved in the accident.

The undisputed facts are :

The wife of the respondent No.1 and mother of respondent Nos.2 and 3 died in the accident which occurred due to rash and negligent driving of car by the

respondent No.4. The car was owned by the respondent No.5 which was insured with the appellant.

The learned Advocate for the appellant has submitted that the Tribunal has committed patent error by not deducting 1/3rd amount from the amount of compensation determined by it which the deceased would have spent for her personal expenses.

3. After hearing, the following points arise for consideration:

(i) *Whether the Tribunal has committed an error in not deducting 1/3rd amount from the amount of compensation determined by it ?*

(ii) *Whether the impugned award is proper or is required to be modified ?*

4. The appellant has not raised any challenge to the finding recorded by the Tribunal that the deceased died because of the injuries sustained by her in the accident which occurred due to rash and negligent driving of car by the respondent No.4. The appellant - Insurance Company has not challenged the findings recorded by the Tribunal regarding the income of deceased and the other relevant aspects.

The submission made on behalf of the appellant that the Tribunal should have deducted 1/3rd amount from the amount of compensation determined by it is accepted by the learned Advocate for the claimants. Therefore, the impugned award is required to be modified to that extent.

The points framed are answered accordingly and following order is passed:

(i) The Tribunal has granted Rs.9,60,000/- under the head “loss of dependency”. From this amount, 1/3rd amount which the deceased would have spent for her personal expenses i.e. Rs.3,20,000/-, is required to be deducted. The claimants are entitled for Rs.6,40,000/- for loss of dependency.

(ii) The amount of Rs.3,25,000/- granted by the Tribunal for loss of company, loss of love and affection and funeral expenses is proper.

(iii) Thus, the claimants are entitled for Rs.9,65,000/- towards compensation.

(iv) With the above modifications, the other part of impugned award is maintained.

The appeal is partly allowed in the above terms. In the circumstances, the parties to bear their own costs.

The appellant - Insurance Company undertakes to deposit the amount of Rs.9,65,000/- along with interest as directed by the Tribunal before the Accident Claims Tribunal, Amravati within two months.

On deposit of the amount, the Tribunal shall take appropriate steps as per the award passed by it, in the matter of disbursement and deposit of the amount.

JUDGE

Tambaskar.

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

Uploaded By : N.V. Tambaskar.
Personal Assistant.

Uploaded On : 28.9.2016.