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

C.A.F. NOS.2259/2016 & C.A.F. NOS.2266/2016
IN
FIRST APPEAL NO.751/2015

The Divisional Manager,
United India Insurance Co. Ltd.,
C/o 2nd Floor, Mahadule Building,
Opposite Mohta Petrol Pump,
Medical Square, Nagpur. ..Appellant.

..Vs..

1. Smt. Bharti wd/o Mukunda Sontakke,
aged 42 Yrs., Occu. Household.

2. Chi. Mithilesh s/o Mukunda Sontakke,
aged 22 Yrs., Occu. Student.

3. Ku. Vishakha d/o Mukunda Sontakke,
aged 20 Yrs., Occu. Student.

4. Ku. Pranali d/o Mukunda Sontakke,
aged 17 Yrs., Occu. Student,
No.4 minor through natural guardian
Petitioner No.1.

5. Smt. Panchfulla w/o Balwantrao Sontakke,
aged 67 Yrs., Occu. Nil.

All R/o Itwari Main Road, Umred,
Distt. Nagpur.

6. Ramesh s/o Ganpatrao Bhusari,
aged Major, Occu. Business,
R/o Nathu Rawalkar Layout,
By-pass Road, Umrer,
Distt. Nagpur.

7. Rahul s/o Ganpatrao Bhusari,
aged about 30 Yrs., Occu. Business,
R/o Nathu Rawalkar Layout,
By-pass Road, Umrer,
Distt. Nagpur. ..Respondents.

Shri M.R. Joharapurkar, Advocate for the appellant.
Mrs. B.J. Murkute, Advocate for respondent Nos.1 to 5.
Shri M.S. Deogade, Advocate for respondent Nos.6 and 7.

CORAM : Z.A.HAQ, J.
DATED : 30.9.2016.

ORAL JUDGMENT

These applications are filed praying that the filing of paper book may be dispensed with and the appeal be heard expeditiously as the claimants require the amount of compensation to meet the expenses for education and medical purposes. Considering the facts of the case, the filing of paper book is dispensed with and appeal is taken up for hearing. The civil applications are **allowed**.

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2. Heard Shri M.R. Joharapurkar, Advocate for the appellant, Mrs. B.J. Murkute, Advocate for the respondent Nos.1 to 5 - claimants and Shri M.S. Deogade, Advocate for the respondent Nos.6 and 7.

3. The appellant - Insurance Company has challenged the award passed by the Tribunal mainly on two grounds : (i) that the Tribunal has committed an error by accepting the claim of the claimants for compensation to the extent of Rs.7,56,000/- considering that the claimants will be required to spend Rs.3,000/- per month for supervision of cultivation operations of their agricultural land as after the death of deceased there is no one to supervise the cultivation operations and (ii) that the policy was “act policy” and deceased was travelling as passenger on payment of

charges and, therefore, there was breach of policy and the Insurance Company is not liable to pay the amount of compensation.

4. With the assistance of the learned Advocates for the respective parties, I have examined the record.

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

> *(i) Whether the Insurance Company is liable to pay the amount of compensation?*
>
> *(ii) Whether the amount of compensation of Rs.7,56,000/- granted by the Tribunal towards charges for supervision of agricultural operations is sustainable?*

6. The submissions made on behalf of the Insurance Company on the first point cannot be considered as there are neither pleadings before the Tribunal on this point nor the Insurance Company has led any evidence on this point. The Insurance Company cannot be permitted to make submissions on the point at the time of hearing of this appeal. Though it is argued that the policy is on record and it shows that it was "act policy", for want of pleadings before the Tribunal, the claimants are deprived of controverting the claim of the Insurance Company on this point. Rejecting the contention raised on behalf of the appellant Insurance Company for the first time before this Court, the point No.1 is answered against it.

7. The submission made on behalf of the appellant - Insurance Company that the amount of compensation to the extent of Rs.7,56,000/- could not have been granted as the claimants have not been able to establish that they will be spending

Rs.3,000/- per month towards charges for supervision of agricultural operations, are required to be considered. The claimant No.1 (widow of deceased) is shown to be doing household work. The claimant No.2 - Mithilesh (son of deceased) was about 15 years at the time of filing of the claim petition before the Tribunal. The claimants have not led any evidence to show that the claimant Nos.1 and 2 could not have supervised the cultivation/agricultural operations. In any case, the Tribunal has granted compensation of Rs.7,56,000/- hypothetically, observing that the claimants will be spending Rs.3,000/- per month for supervision of agricultural operations for about 21 years. The claimants have not brought any evidence on record to substantiate this claim. Considering these aspects, I am in agreement with the submission made on behalf of the appellant - Insurance Company that the amount under this head is wrongly granted to the claimants.

8. However, I find that the Tribunal has granted very meager amount of Rs.10,000/- compensation to the claimants under each of the conventional heads i.e. for loss of consortium, for loss of love and affection, for loss of estate and the amount of compensation granted for funeral expenses is only Rs.5,000/-. Furthermore, the findings recorded by the Tribunal that the deceased was earning about Rs.8,000/- per month from his business is based on evidence on record including income tax return of deceased and Tribunal has not added 50% of the income of deceased towards future prospects. In view of the failure on the part of the Tribunal to consider the entitlement of the claimants for compensation on this count, I am not inclined to reduce the amount of compensation granted by the Tribunal.

In view of the above, the appeal is **dismissed**. In the circumstances, the parties to bear their own costs.

The amount be invested as directed by the Tribunal by the award dated 13th May, 2014.

The learned Advocate for the claimants has pointed out the order passed by this Court on 29th April, 2015 and has submitted that the appellant Insurance Company has deposited only 75% of the amount. If if is so, the appellant - Insurance Company is directed to deposit the balance amount with the Registry of this Court within two months, failing which the claimants will be at liberty to execute the award for the balance amount.

If the balance amount is deposited, it should be also invested as directed by the Tribunal.

JUDGE

Tambaskar.