

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.4604 OF 2016****IN****FIRST APPEAL NO.473 OF 2015**

Mrs. Parvati Ramchandra Zanzad And Ors. ...Applicants

vs.

The New India Assurance Co. Ltd.Respondent

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Ms. Varsha Chavan, for Applicant Nos. 1 to 5.

Mr. Ramesh Cheulkar, for the Respondent.

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CORAM : S.C. GUPTE, J.**DATED : 5 MAY 2017****P.C. :**

. Heard learned Counsel for the parties on the First Appeal.

2. The First Appeal challenges an award of compensation passed by MACT, Mumbai on an accident claim application. On 13 November 2005, the deceased accident victim, while riding pillion on a motor cycle driven by his son, met with an accident. A motor jeep, which was insured with the Appellant Insurer, hit the motor cycle whilst being driven in a rash and negligent manner. The deceased sustained injuries, was moved to a Government Hospital and, in the course of his treatment, died on 18 November 2005. The Trial Court found the rash and negligent driving of the insured motor jeep, which caused the accident as proved. The defence of the insurer that the driver of the jeep did not hold a valid licence or that it was driven in breach of the policy

was held in negative by the Trial Court since there was no evidence in that behalf led by the Insurer. The Tribunal also held that the Applicants, who were legal heirs of the deceased, were entitled to receipt of compensation of Rs.6,60,120/-, along with interest at the rate of 7.5% p.a. from the filing of the application till payment on realization.

3. Learned Counsel for the Appellant presses three grounds. Firstly, it is submitted that the jeep was driven by a driver, who did not have a valid driving licence. Secondly, it is submitted that there was a breach of permit insofar as the insured vehicle concerned, since it was carrying more passengers than allowed to carry as per permit. On either of these issues, no evidence was led by the Appellant. For want of evidence, the findings recorded on both these issues in negative do not warrant any interference.

4. Learned Counsel for the Appellant also submits that the quantum of compensation has not been correctly determined by the Trial Court. The Applicants led evidence of Applicant No.1, who is the widow of the deceased. The deceased was working with Tata Mills, Mumbai and was drawing a salary of Rs.7000/- per month. In support of her version, she examined the Deputy Manager of Tata Mills. The Deputy Manager produced verified service record of the deceased. The oral evidence led by the Applicant supported by verified copy of service record established that the deceased was getting monthly salary of Rs.6,630/-. Since this would obviously be gross salary, an appropriate deduction was made towards standard deductions such as professional tax, etc. and the net monthly salary of Rs.6000/- was arrived at.

Considering the age of the deceased, who was within the age group of 50 to 55 , multiplier of 11 was rightly applied and, accordingly, total compensation was worked out. There is no infirmity in the working of the compensation.

5. Accordingly, there is no merit in the First Appeal and the same is dismissed with costs.

6. In view of the disposal of the First Appeal, the Civil Application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)