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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL ST NO. 6294 OF 2014

WITH

CIVIL APPLICATION NO. 701 OF 2015

The Oriental Insurance Co Ltd ...Appellant

Versus

Laxman Tukaram Kadam & Anr ...Respondents

FIRST APPEAL ST NO. 4722 OF 2014

WITH

CIVIL APPLICATION NO. 3 OF 2015

The Oriental Insurance Co Ltd ...Appellant

Versus

Nita Shantaram Disale & Ors ...Respondents

FIRST APPEAL ST NO. 4732 OF 2014

WITH

CIVIL APPLICATION NO. 5 OF 2015

The Oriental Insurance Co Ltd ...Appellant

Versus

Ashok Dattu Disale & Anr ...Respondents

FIRST APPEAL ST NO. 4727 OF 2014

WITH

CIVIL APPLICATION NO. 4 OF 2015

The Oriental Insurance Co Ltd ...Appellant
Versus
Uttam Bandu Disale & Anr ...Respondents

FIRST APPEAL NO. 4737 OF 2014

WITH

CIVIL APPLICATION NO. 6 OF 2015

The Oriental Insurance Co Ltd ...Appellant
Versus
Santita Ramchandra Chavan & Ors ...Respondents

Mr DS Joshi, *for the Appellant-company in all FAs.*
Mr TJ Mendon, *for the Respondents in all FAs.*

CORAM: G.S. PATEL, J
DATED: 13th July 2017

PC:-

1. All five Appeals arising out of a same accident. All five Appeals take the same plea that the insurer-Appellant is not liable because the premium cheque by its constituent insured was dishonoured. An unfortunate aspect is that the insurer led no evidence at all of this dishonour. Instead this is what it says in ground (n):

> "(n) The matter needs to be remanded back to the learned Tribunal for giving an opportunity to the Appellant to lead evidence in respect of intimation of dishonour as well as fraud played by the Insured as above. The Tribunal granted almost 13 dates for almost a period of 2 years (from 08/10/2010 to 03/10/2013) to the claimants to lead

> evidence even after keeping the matter for dismissal as last chance on various occasions and for evidence of claimant witnesses on 3 dates but closed the evidence of the Appellant in 4 dates in a haste. The evidence of Appellant employee as well as Mr Raju Pawar and Insured is necessary to unveil the truth by proving the fraud played upon by the Insured and interest of justice also demands fair opportunity to both the parties hence the matter deserves remand for the evidence of the Appellant witnesses."

2. Of such a ground, perhaps the less said is the better. The grievance is that the Claimants were given enough opportunity to lead evidence but the insurer was given 'only three or four dates' to prove the dishonour of cheque. This, apparently, according to the Insurance Company is not a question of "justice delayed being justice denied" but "justice hurried being justice buried".

3. This submission only needs to be stated to be rejected and in fairness Mr Joshi has done no more than draw attention to this ground.

4. **In First Appeal St No. 4737 of 2014**, intervention is required on behalf of the Claimants. This is because the combined amount towards loss of consortium by Applicant No. 1, and loss of love and affection for others has been taken at a mere Rs. 10,000/-. The Claimants are the deceased's widow, their two minor daughters, two minor sons and his widowed mother. The award is unsustainable. It is not helped by the fact that only an amount of Rs. 5,000/- is awarded towards loss of estate and an amount Rs. 5,000/- towards funeral expenses.

5. The funeral expenses should be reckoned at Rs. 25,000/-; loss of consortium to Applicant No. 1 must be reckoned at Rs. 1 lakh and the loss of love and affection and loss of estate to Applicants Nos. 2 to 6 must be reckoned at Rs. 1 lakh each. This will make a net addition of Rs. 6,05,000/- to the Award, Rs 20,000/- already having been granted. The decree is modified accordingly.

6. The total amount will, therefore, be Rs. 10,03,000/-, rounded of to Rs. 10 lakhs. Of this, Rs 6 lakhs is payable to Applicants Nos. 2 to 6 and Rs 4 lakhs to the Applicant No. 1. The interest rate is maintained at 7.5%.

7. The statutory deposit of Rs. 25,000/- is also to be transferred to the MACT within two weeks from today.

8. The balance amount is to be deposited by the insurer within a period of eight weeks from today.

9. The original Claimants are at liberty to withdraw the entire amount with accrued interest.

10. **<u>In First Appeal St No. 4722 of 2014</u>**, a combined amount of Rs. 10,000/- is taken towards loss of consortium and loss of love and affection; Rs. 5,000/- towards loss of estate and Rs. 5,000/- for funeral expenses, making a total of Rs. 20,000/-. This is inadequate and unjust. The deceased was survived by his widow, three minor daughters and his 50 year old mother. An amount of Rs. 1 lakh must be granted towards loss of consortium to the widow and an amount of Rs. 1 lakh each to the Applicants Nos. 2 to 5 plus Rs. 25,000/- towards funeral expenses, making a total of Rs. 5,25,000/-. Thus there is an increase of Rs. 5,05,000/-, making a total compensation of Rs. 9,57,000/-. Of this, an amount of Rs. 1 lakh is to be paid to Applicants Nos. 2 to 5 each. The balance amount is to be paid to the widow, Applicant No. 1.

11. The statutory deposit of Rs. 25,000/- is also to be transferred to the MACT within two weeks from today.

12. The balance amount is to be deposited by the insurer within a period of eight weeks from today.

13. The original Claimants are at liberty to withdraw the entire amount with accrued interest.

14. There is no merit in the other three Appeals. They are dismissed.

15. Consequently, all Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J)