IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1036 OF 2016
WITH
CIVIL APPLICATION NO. 2197 OF 2013
IN
FIRST APPEAL NO. 1036 OF 2016

New India Insurance Co. Ltd. ...Appellant

Versus

Bilkesh Badshah Mukadam & Ors. ...Respondents

WITH

FIRST APPEAL NO. 1036 OF 2016
WITH
CIVIL APPLICATION NO. 3740 OF 2015
IN
FIRST APPEAL NO. 1036 OF 2016

Bilkesh Badshah Mukadam & Ors. ...Applicants

IN THE MATTER BETWEEN

The New India Insurance Co. Ltd. ...Appellant

Versus

Bilkesh Badshah Mukadam & Ors. ...Respondents

…...

Mr.S.S.Jinsiwale for the Appellant.
Mr.S.V.Chaugule i/b. Mr.S.S.Deshmukh for Respondent Nos. 1 to 3.

…...

CORAM: MRS.MRIDULA BHATKAR, J.
DATED: OCTOBER 10, 2017

P.C. :

1. Admit, By consent of the parties, the First Appeal is heard finally and decided at the stage of admission.

2. This Appeal is filed by the insurance company against the judgment and award dated 31.12.2012 passed by the learned Ex-Officio Member, Motor Accident Claims Tribunal, Karad, District-Satara in M.A.C.P.118 of 2010 thereby granting compensation of Rs. 5,43,000/- with interest @ 6% p.a. from the date of filing of this petition till the realization of the amount.

3. It is a death claim. The claim application is filed by the respondents, who are the widow and two children of the deceased. The deceased Badshah Mukadam was driving jeep bearing registration no. MH-12/BA-5648 towards Patan. On 21.05.2010, at about 9.30 a.m. when the deceased was driving the said jeep, one tanker bearing registration no. MH-09/L-7020 came speedily and gave dash to the jeep. The accident took place due to rash and negligent driving of the driver of the tanker. Due to accident, the deceased Badshah succumbed to the injuries and died on the spot. The respondents/claimants claimed total compensation of Rs. 12,88,000/-, but restricted their claim to Rs. 5,00,000/- for the purpose of Court

Fees. The insurance company resisted the claim of the respondents/claimants on the point that the driver of the said tanker was negligent in driving and he was not holding valid and effective driving licence to drive the tanker, which was carrying hazardous material and thus, due to breach of terms and conditions of the policy, the claim is not maintainable and the appellant/insurance company is not liable to pay any compensation. Opponent no. 2 i.e the owner has also filed the Written Statement and has denied all the contentions raised in the claim petition. Opponent no. 2 has stated that he had permit to carry chemicals in the tanker. Claimant no.1/widow entered in the box and produced the documents on the point of accident. On the point of accident, there is no need to discuss, as there is sufficient material on record as how the accident was occurred.

4. Learned counsel for the appellant/insurance company has submitted that the tribunal ought to have considered the defence taken by the insurance company on the point of negligence of the driver so also breach of terms and conditions of the policy. He has further submitted that on the point of accident, the evidence of PW-3 Shafi Inamdar, who was also traveling in the same jeep, stated that the jeep was driven by his deceased brother. He has deposed that while returning towards Patan, the said tanker came speedily in rash and

negligent manner and gave dash to the said jeep. The accident took place due to negligence of the driver of the tanker. He has also deposed that the impact of accident so tremendous, due to which the said jeep dragged upto 50 to 60 feet to back side and turned turtle. The accident caused two casualties.

5. The learned Member, MACT has discussed the evidence properly and there is no necessity to consider the submissions on the point of negligence led by the insurance company. The appellant/insurance company did not examine any witness to substantiate the defence of breach of the policy.

6. The deceased was 50 years old. On the point of quantum, the tribunal has fixed the income of Rs. 6000/- p.m. and granted compensation of Rs. 5,43,000/- to the claimants alongwith interest accrued thereon @ 6% p.a.

7. While going through the judgment and award dated 31.12.2012 passed by the learned Ex-Officio Member, Motor Accident Claims Tribunal, Karad, District-Satara, I found that the rate of interest granted by the tribunal is @ 6% p.a., which is on the lower side. As the matter of policy, I rely on the judgment in the case of ***The New India***

Assurance Co. Ltd. Versus Smt. Alpa Rajesh Shah & Ors. reported in ***2014 (2) Mah.LJ 17***. This Appeal is filed by the appellant/insurance company and no cross objection was filed by the claimants. While going through claim application, it is found that the claimants have assessed the claim of Rs. 12,88,000/-, but they have no money to pay the Court Fees. They restricted their claim to Rs. 5,00,000/- for the purpose of Court Fees.

8. Considering this situation and the findings given in the case of ***The New India Assurance Co. Ltd. Versus Smt. Alpa Rajesh Shah & Ors.*** I am of the view that the rate of interest is to be increased from 6% to atleast 7.5% p.a. and Rs. 50,000/- deserves to be granted on account of loss of consortium instead of Rs. 5,000/-. Though, this Appeal is filed by the insurance company, it is the duty of the Court to see that just and adequate compensation is to be granted to the claimants. Hence, I increase the amount of consortium from Rs. 5000/- to Rs. 50,000/- and the rate of interest from 6% to 7.5% p.a. is to be paid to the claimants from the date of the application. The appeal fails. Appeal is accordingly dismissed.

9. In view of the dismissal of the appeal, Civil Application No. 3740 of 2015 filed for withdrawal by the claimants is allowed. Further, the statutory amount of Rs.25,000/- which was deposited in this Court at

the time of filing of this appeal, shall be transferred to the Motor Accident Claims Tribunal, Karad and the same shall also be allowed to be withdrawn by the claimants.

10. In view of the dismissal of the Appeal, Civil Application No. 2197 of 2013 also stands disposed of.

(MRIDULA BHATKAR, J.)