Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2085 OF 2017
IN
FIRST APPEAL NO. 1270 OF 2016

Reshma Arif Tamboli & Ors …Applicants
In the matter between
ICICI Lombard General Insurance Co Ltd ...Appellant
Versus
Reshma Arif Tamboli & Ors …Respondents

Ms Deepika Prabhula, *i/b RES Juris, for the Appellant.*
Mr Jayprakash S Kapre, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 1st August 2017

PC:-

1. Respondents Nos.1 to 5, the original Claimants have sought withdrawal.

2. The Appeal is against an award in a fatal accident case. The award was passed on 12th February 2016 by the Motor Accident Claims Tribunal (**"MACT"**), Pune. The deceased was 38 years old and said to be earning Rs.50,000/- per month from his business. He along with others was travelling in a zen motorcar from Kedgaon, district Solapur to Pune on the Pune-Solapur highway. On 28th February 2009 at about 5.45 am, as they reached the boundary of village Yawat, a truck came towards them on the wrong side of the road and there was a head-on collision with the Zen car. The truck was moving at an excessive speed and was being driven recklessly and without due caution. The deceased was among the passengers in the zen, who died on the spot.

3. Having regard to all these factors, and the income of the deceased, the Tribunal awarded an amount of Rs.18,45,000/- with interest at 8%. The compensation awarded was distributed between the 1st Applicant, the deceased's widow, the 2nd and 3rd Applicants, two minor children (a son and a daughter) and the deceased's mother, Applicant No.4.

4. The present application is by all four of the Applicants. The challenge to the judgment is that the income of the deceased was reckoned on the higher side. There is an attempt to argue that the driver of the Zen car was also negligent but *prima facie* I do not think there is much substance in this. I will allow, subject to the outcome of the Appeal, withdrawal of 60% of the amount without requirement of security or an undertaking. The MACT will permit the withdrawal with accrued interest on production of an authenticated copy of this order. The remaining amount is to be invested in a fixed deposit with the nationalised bank. The statutory deposit of Rs.25,000/- is to be transferred to the MACT, Pune, where it will be invested similarly in a fixed deposit with the nationalised bank.

5. The Civil Application is disposed of in these terms. No costs.

(G. S. PATEL, J.)