IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1270 OF 2017
IN
FIRST APPEAL (STAMP) NO.10640 OF 2017
WITH
CIVIL APPLICATION NO.1271 OF 2017
IN
FIRST APPEAL (STAMP) NO.10640 OF 2017

Reliance General Insurance Co. Ltd. …Applicant/Appellant
vs.
Smt. Monica Jignesh Parekh, w/o.
Deceased and Ors. …Respondents

…….

Ms. Poonam Mital, for the Applicant.

Ms. Varsha Nichani, for Respondent Nos. 1 to 3.

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CORAM : S.C. GUPTE, J.

DATED : 2 MAY 2017

P.C. :

. Heard learned Counsel for the parties.

2. Civil Application No.1270 of 2017 is for condonation of a delay of 124 days. For the reasons stated in the Civil Application, the same is allowed by condoning the delay. Office shall now number the First Appeal and place the same for admission in due course.

3. Civil Application No.1271 of 2017 is for stay of execution of the impugned award of MACT, Mumbai. Learned Counsel for the

Applicant/Appellant submits that her client shall deposit the entire decretal amount, together with uptodate interest, in the Trial Court and against such deposit, the execution of the impugned award be stayed. Learned Counsel for Respondent Nos. 1 to 3 (Original Applicants) has no objection to this stay being granted. She, however, submits that considering the limited nature of the challenge to the impugned award, her clients be permitted to withdraw a substantial part of the compensation to be deposited by the Appellant Insurer.

4. The Applicants are widow, son and father of the deceased accident victim, who died in a road accident on 19 February 2010. The deceased was proceeding in his motor car on Pune Mumbai Express Highway. It is the case of the Applicants that the motor car was being driven at a moderate speed with full care and caution. When the deceased reached near kilometer stone No.16 within the vicinity of Panshil Village, District Raigad, his motor car crashed into the offending motor truck negligently stationed on the road in the fast lane, i.e. Lane No.1, during night time, without switching on the parking lights or keeping any obstruction or indication around the stationed vehicle so as to caution the drivers coming from behind. The deceased, who was seriously injured in the accident, was shifted to a hospital but succumbed to his injuries the next day whilst under treatment. The Trial Court held that the accident, which caused the death of the deceased, occurred due to gross negligence on the part of the owner/driver of the insured truck. The police panchnama placed on record in the present case reveals that the car, in which the deceased was driving, was entangled in the back side of the stationary truck parked in lane No.1 of

the Pune Mumbai Express Highway. From the police papers there is no clarity that the truck driver had turned the parking lights on or had placed any stone or impediment around the truck so as to caution the drivers coming from behind. That the truck was found on Lane No.1, which is meant for fast and overtaking vehicles, on an Express Highway, without there being any evidence of any indication or arrangement to caution drivers of vehicles coming from behind prima facie indicates a grossly negligent act on the part of the offending vehicle and makes the insurer of the vehicle liable for the injury to a substantial extent. Based on the police records and other material before the Court, the Trial Court held that the deceased was guilty of contributory negligence. The Court estimated his contributory negligence at about 40% and, accordingly, made an allowance in the award of compensation granted to the legal heirs of the deceased.

5. Learned Counsel for the Appellant Insurer raises two main grounds of challenge. Firstly, learned Counsel submits that considering the age of the deceased, instead of 50% of income being added towards future prospective income, the addition could only have been about 30%. Secondly, she submits that contributory negligence in the present case is fixed at 40% arbitrarily. She submits that there was an equal responsibility on the part of the deceased and such contributory negligence ought to have been estimated at 50%.

6. The First Appeal is yet to be heard for admission. However, even making full allowance for the submissions made by learned Counsel for the Appellant Insurer and accepting her contentions in toto,

would result in the award being varied from Rs.1.10 crores to about Rs.75 lakhs. In the premises, and considering the old age of Respondent No.3 (he is about 75 years old) and the needs of Respondent No.2 (who is 12 years old), it is in the interest of justice that the Respondents be permitted to withdraw a sum of Rs.75 lakhs from out of the compensation to be deposited by the Appellant Insurer in pursuance of the impugned award as a condition of stay of execution.

7. Accordingly, Civil Application No.1271 of 2017 is disposed of in terms of the following order :

(i) Pending the hearing and final disposal of the First Appeal there will be a stay of execution of the impugned award, subject to the Appellant Insurer depositing the entire decretal amount awarded by the Trial Court along with upto date interest awarded, before MACT, Mumbai within a period of six weeks from today;

(ii) Respondent Nos. 1 to 3 shall be permitted to withdraw a sum of Rs.75 lakhs from out of this amount without any security;

(iii) Rest of the amount deposited by the Appellant shall be invested by Registrar, MACT, Mumbai, in Fixed Deposit/s of a Nationalised Bank, initially for a period of one year and thereafter renewable from time to time, till further orders.

(iv) First Appeal to come up for admission on 19 June 2017.

(S.C. GUPTE, J.)