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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## FIRST APPEAL NO. 1 OF 2015
## WITH
## CIVIL APPLICATION NO. 8 OF 2015

The New India Assurance Co Ltd ...Appellant
*Versus*
Mukta Dayalji Rampariya & Ors ...Respondents

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**Mr Devendranath S Joshi**, *for the Appellant/Applicant.*
**Mrs Varsha Chavan**, *for the Respondents Nos. 1 to 4.*

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**CORAM: G.S. PATEL, J**
**DATED: 27th July 2017**

**PC:-**

**1.** The appeal is by the insurer against a judgment dated 14th December 2012 rendered by the MACT, Mumbai in an application under Section 166 of the Motor Vehicles Act 1988 for compensation in the amount of Rs. 12,00,000/- in a fatal accident case. The deceased, Dayabji Mohanram Pariam was about 47 years old at the time of his passing. He was a mason. He lived at Jarihar Chawl, Mumbai. He was assessed to tax with an annual income of Rs. 1,02,992/-.

**2.** On 2nd November 2006 at about 5.30 in evening, while he was on the Jogeshwari-Vikhroli Link Road riding pillion on a motorcycle driven by his son, a motor tanker No. KA-36-3310, being driven in a reckless and negligent fashion, crashed into the motorcycle. The deceased was taken to Rajawadi hospital, and there declared dead on arrival. It was said that the tanker driver did not brake or honk to avoid the accident. The son suffered injuries. He separately filed a claim, the subject matter of First Appeal (St) No. 13947 of 2017.

**3.** The owner of the tanker did not appear before the Tribunal. The insurance company contested the claim. It took the usual defence that the driver did not have a valid licence, but then insurance companies all seem to proceed on the basis, at least in Mumbai, that all motor vehicle drivers set off to wherever they are going without a valid license. There is seldom anything to be made of this at the trial. It seems that there was another more substantial point, and that is whether the tanker had a valid permit to ply at all on the date of the accident. The insurer's witness, one Melita Lobo, was examined. She was an administrative officer who had worked with the insurer for about 19 years. She confirmed the policy that was issued by the insurer. She produced a duplicate. She said then that an investigator had looked into the mater on behalf of the insurer and reported that the vehicle permit was not valid at the time. An RTO extract in original was produced by the investigator and it was marked as Exhibit 31. It purportedly showed that the permit was not valid on the date of the accident.

**4.** Now all of this is very peculiar. There is no reason why the investigator was not examined. In fact, in her cross-examination Lobo said that she was "not interested" in filing any documents. The permit extract was not therefore proved through the person who obtained it and the report of the investigator was never proved because its author's evidence was never led. It is submitted that the permit was renewed the very next day after the accident on 3rd November 2006. This is doubly strange because there is no manner of doubt that the policy was a comprehensive one issued for the period from 8 April 2006 to 7 April 2007; this means that at least on the date of the issuance of the policy there was a valid permit. Of course, it is a requirement that a permit has to be kept revalidated during the term of the insurance cover but I am not at all certain that a one-day lapse would operate to void the entire policy, or that it would stand restored or revived as soon as the permit was renewed. This can only mean that the insurance policy was suspended for the one day during which the permit was invalid and that this 'suspension' disappeared upon revalidation of the permit.

**5.** There is nothing except Exhibit 31 before me to show that the permit was in fact valid on that date. It may be true that the investigator was not examined. But that does not mean that available evidence should be ignored. What it might mean is that the final frame of the order may require to be altered; in this particular case for example I would imagine that the appropriate course is to direct the insurer to make the payment and then leave it to him to recover the entire amount with interest as an executable decree in execution proceedings as has been held can be done in *National Insurance*

*Company Ltd vs Challa Bharathamma & Ors.*[1] It is clarified that in such an event it will not be necessary for the insurer of course to file separate substantive proceedings for recovery, and that recovery in execution can be effected in these proceedings before the MACT itself.

**6.** As regards the award itself, the true peculiarity emerges in paragraph 17 where, with respect, the tribunal went wrong. This is what it did:

:copy para 17:

**7.** Now the court is not concerned about the resultant figure when one correctly takes the income and multiplicand. Courts are agnostic when it comes to personalities, and equally when it comes to monetary amounts. We are only concerned with that one end result, something that cannot really ever be quantified, and that is justice. That requirement does not allow us to randomly reduce awards that are otherwise in consonance with law just because we feel that the result is too high. If this is permitted, it would lead to complete uncertainty and ad-hocism in the ensuing results. If there is one thing the rule of law demands, it is certainty.

**8.** There was no occasion for the Tribunal to reduce the multiplier from 13 to eight in this fashion. The original multiplier of 13 will have to be retained. It is the correct multiplier based on the decision of the Supreme Court in *Sarla Varma v Delhi Transport*

**1**(2004) 8 SCC 517

*Corporation.*[2] The loss of dependency would thus come to Rs. 5,20,000/-.

**9.** The amounts taken for loss of estate, love and affection, funeral expenses and loss consortium are also very much on the lower side. The amount towards funeral expenses should be taken as Rs. 25,000/-; the amount for loss of consortium at Rs. 1,00,000/-; for loss of love and affection Rs. 1,00,00/- and, loss of estate may be reckoned at Rs. 1,00,000/-, thus making a total of Rs.8,45,000/-. The amount of interest at 7.5 % will have to be retained.

**10.** The decree is modified in these terms.

**11.** The appellant insurer, original opponent No.2, will pay the amount and will under this decree be entitled to recover the entire amount with interest at 7.5% per annum from original opponent No.1.

**12.** The entire amount deposited with accrued interest will be withdrawn by the original claimants. An amount of Rs. 2,45,000/- may be withdrawn by the 1st claimant/widow with accrued interest. The remaining amount of Rs. 6,00,000/- will be divided equally between claimants Nos. 2, 3, 4 and 5, who will each get Rs.1,50,000/- each with accrued interest.

**13.** The statutory deposit of Rs. 25,000/- is also to be transferred to the MACT within two weeks from today and will be invested

**2** (2009) 6 SCC 121.

until withdrawal. This amount may also be withdrawn by the 1st Respondent widow.

**14.** The original award was for Rs. 4,00,000/-. Since the decree is for higher amount, the remaining amount with interest will have to be deposited. The interest on the additional amount of Rs. 4,45,000/- at 7.5% per annum will be paid from the date of the original application until deposit. The additional amount and the accrued interest will be deposited within eight weeks from today.

**15.** The claimants are entitled to withdraw the aforesaid amounts with accrued interest on production of an authenticated copy of this order.

**16.** The appeal is disposed of in these terms with no orders with costs.

**(G. S. PATEL, J)**