IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL st. NO.15893 OF 2011

National Insurance Co. Ltd. ... Appellant

Vs.

Saroj Kamaluddin Mamdani & Ors. … Respondents

WITH
CIVIL APPLICATION NO.2760 OF 2017
IN
FIRST APPEAL st. NO.15893 OF 2011

Saroj Kamaluddin Mamdani & Ors. .. Applicants

IN THE MATTER OF:
National Insurance Co. Ltd. ... Appellant
Vs.
Saroj Kamaluddin Mamdani & Ors. … Respondents

Mr.Rahul Mehta i/b KMC Legal Venture for the Appellant in FA

Mr.T.J. Mendon for Respondent Nos.1 to 5 in First Appeal and for Applicants in CAF/2760/2017

CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 13, 2017

P.C. :

1. In this appeal, respondent Nos.1 to 5, who are the original claimants, have moved an application for withdrawal of the amount deposited by the appellant Insurance Company. The First Appeal is pending admission since 2011. At the time of hearing the application for withdrawal of the compensation amount, it was found that a very short issued is involved in the matter and Respondent No.6 though served is not appearing before the Court. So also, it was pointed out by the learned Counsel for the appellant insurance company that respondent No.6, the owner of the tempo, did not appear in the main application No.1992 of 2000 before the Motor Accident Claims Tribunal, Mumbai, and the matter was heard *ex-parte* against Respondent No.6, who was opponent No.1 in the said claim petition.

2. In view of the above, the First Appeal is admitted. By consent of the parties, the appeal is taken up forthwith for final hearing at the stage of admission.

3. The First Appeal is filed against the judgment and award dated 26.10.2010 passed in MACP No.1992 of 2000 by the learned Member, Motor Accident Claims Tribunal, Mumbai. The accident took place on 20.5.2000 when the deceased Kamaludddin was proceeding on his 2-wheeler, when a tempo bearing registration No.HR-38-BG-3656 driven in rash and negligent manner, dashed the the scooter of the deceased. The driver of the tempo applied brakes carelessly, which led to collision of the scooter and the tempo. Kamaluddin was severely injured. He was taken to hospital, however, he succumbed to the injuries. Kamaluddin was 47 years old at the time of the accident. He was in business and as per the case of the claimants, he was earning Rs.1,10,000/- per annum. The appellant / insurance company filed its written statement and opposed the claim. It was contended that the deceased was rash and negligent. It also raised the defence of breach of the conditions of the policy. Respondent No.6 i.e., the opponent No.1 in the application, did not appear. The learned Member, Tribunal, after considering the evidence and defence, allowed the application partly and granted compensation of Rs.8,97,514/- inclusive of No Fault Liability @ 7.5% p.a. from the date of filing of application.

4. The point of determination is whether the compensation awarded is excessive, exorbitant and not just and adequate? The answer is No.

5. The learned Counsel for the appellant / insurance company has submitted that the driver of the tempo vehicle was not holding a valid licence but it was a fake licence. The learned Member, Motor Accident Claims Tribunal, ought to have taken into account the evidence of DW1 Vijay, the administrative officer of the insurance company. He has submitted that the appellant insurance company has relied on the investigating report and also produced a letter issued by the R.T.O. to submit that the Tribunal ought to have appreciated those documents and the defence of the insurance company that the driver of the tempo was holding fake driving licence. The learned Counsel has further submitted that the trial Court should not have accepted the evidence of the claimant on the point of income of the deceased.

6. Learned Counsel for the original claimants has supported the impugned judgment and award passed by the Tribunal. He submitted that the claimants have produced the documentary proof i.e., the income tax returns for the assessment years 1996-1997 and 1998-1999 as the accident took place in 2000. The claimants have also tendered evidence regarding the business of the deceased who was dealer and reseller of spare parts. He was also getting remuneration from M/s.Raj Auto Parts. The learned Counsel also submitted that apart from earning, the family had spent an amount of Rs.4,38,764/- towards the bill of Lilavati hospital, where the deceased was treated and total expenses as per the evidence of PW1 Rahim i.e., the original applicant, was around Rs.5 lakhs.

7. Heard submissions. Perused the judgment and award passed by the learned Member, Tribunal. The Tribunal has considered the Income Tax returns are also evidence in respect of the other income of the deceased and has fixed the earning of the deceased as Rs.45,000/- per annum, which is not at all excessive. The Tribunal has discussed and given correct reasons and rightly fixed the multiplier at 13. It has also rightly accepted the amount of Rs.4,38,764/- towards medical expenses for treatment. The submissions of the learned Counsel for the appellant on the point of quantum are not acceptable so also his submissions that there is a breach of policy is not also not convincing. The Tribunal has dealt with these contentions raised by the insurance company regarding breach of policy on the ground that the driver of the offending vehicle was holding fake licence. The Tribunal has rightly considered the ratio laid down in the case of **National Insurance Co. Ltd. vs. Swaran Singh**[1]**.**

1 2004 ACJ 1 SC

8. The appellant insurance company did not examine the R.T.O. officer or any other officer to prove that the driver was holding a fake licence and thus, I am of the view that the compensation awarded by the Tribunal is just and adequate and hence, the appeal fails. Appeal is accordingly dismissed.

9. In view of the dismissal of the appeal, Civil Application No.2760 of 2017 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, Mumbai and the same shall also be allowed to be withdrawn by the claimants.

(MRIDULA BHATKAR, J.)