IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.951 OF 2016
WITH
CIVIL APPLICATION NO.3245 OF 2014

United India Insurance Company Ltd. … Appellant/Applicant
Versus
Mrs. Nanda Narayan Patole And Others … Respondents

WITH
CIVIL APPLICATION NO.4623 OF 2016
IN
FIRST APPEAL NO.951 OF 2016

Mrs. Nanda Narayan Patole … Applicant
Versus
United India Insurance Company Ltd. … Respondent

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Mr. Nikhil Mehta a/w Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant in First Appeal No.951 of 2016 and Applicant in Civil Application No.3245 of 2014 and Respondent in Civil Application No.4623 of 2016.
Mr. Sandesh Patil a/w Mr. Chintan Shah for Respondent Nos.1 to 4 in First Appeal No.951 of 2016 and Civil Application No.3245 of 2014 and for the Applicant in Civil Application No.4623 of 2016.

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CORAM : S.C.GUPTE, J.

DATE : 27 APRIL 2017

P.C. :

. Heard learned Counsel for the parties. The First Appeal is admitted and taken up for hearing forthwith by consent of Counsel.

2 This First Appeal is filed by the Appellant, who is the insurer and against whom an order of compensation is passed by Motor Accident Claims Tribunal at Kalyan, in respect of a motor accident involving a fatality. One Narayan Patole, aged 42, years working in security department of Municipal Corporation of Greater Mumbai, died in an accident whilst riding a motorcycle on the way to the place of his duty. His motorcycle was hit by a jeep coming from the opposite direction. The jeep was insured with the Appellant insurer. Both opponent No.1 (owner of the vehicle) and opponent No.2 (Appellant herein) resisted the claim petition by filing written statements. Two witnesses were examined on behalf of the Applicants, namely, P.W. 1 Smt. Nanda Patole and P.W. 2 Vijay Dalimbkar, the representative of the employer of the deceased. Based on this evidence, as also police papers including the report filed by an eye witness, the complaint, spot panchnama, inquest panchnama and post mortem report, etc., the Tribunal came to a conclusion that the deceased met with accidental death due to rash and negligent driving of the jeep insured with the Appellant. The Tribunal further came to a conclusion that the Applicants, who are legal heirs of the deceased were entitled to receive compensation of Rs.16,95,000/- together with interest at the rate 9 % per annum from the date of the petition till realization of the amount.

3 There are two main grounds of challenge urged by the Appellant insurer at the hearing. Firstly, it is submitted that there was contributory negligence on the part of the deceased in driving the motorcycle. There is no evidence led either by the owner of the vehicle or the insurer in this behalf. The tribunal, relying on the police papers, which include a report of investigation by the police and oral testimony of the witnesses examined

by the Applicants, which was consistent with the police papers, came to the conclusion that the case of contributory negligence set up by the Appellant insurer was not made out. No infirmity can be found in this conclusion of the trial court.

4 The second ground concerns the quantum of compensation awarded by the tribunal. It is submitted by learned Counsel for the Appellant insurer that there is a serious infirmity in the matter of calculation of prospective income of the deceased. Relying on the judgment of Supreme Court in a case of **Sarla Verma Vs. Delhi Transport Corporation**[1], it is submitted that the deceased being aged 42 years, the thumb rule for calculating income for future prospects was of 30% and not 50% as computed by the tribunal. Learned Counsel for the Respondents (original Applicants) contests the thumb rule. Learned Counsel also submits that even if this thumb rule is applied, considering the number of dependents, the allowance of personal expenses, which is taken by tribunal at 1/3rd, should have been computed at 1/4th. Anyway, taking an overall view of the matter and considering the thumb rule pressed into service by the Appellant insurer and the matter of personal expenses urged by the Respondents, this Court is of the view that the compensation of Rs.14,50,000/- (Rs. Fourteen Lac Fifty Thousand only) in place of 16,95,000/- ordered by the tribunal on account of principal amount should be fair and adequate compensation. The Respondents do not join issue with this reworking of the compensation.

1 2009 ACJ Pg.1298

5 Accordingly, the First Appeal is partly allowed by substituting the principal amount of "Rs.14,50,000/-" in place of "Rs.16,95,000/-" in clause-2 of the operate part of the impugned order dated 31 December 2013. The rest of the award is sustained.

6 Sine original Applicant Nos.2 to 4 have now become majors, there is no question of keeping any amount in fixed deposit/s. Accordingly, the Appellant is directed to pay Rs.14,50,000/- together with interest at the rate of 9 % per annum computed from the date of the claim petition till payment or realization, to Respondent Nos.1 to 4 (original Applicants). No order as to costs.

7 The amount of Rs.25,000/- deposited by the Appellant insurer as a pre-condition for filing this First appeal, shall be made over by the Registry to Respondent Nos.1 to 4. This amount will be adjusted towards interest payable by the Appellant in accordance with paragraph-6 above.

8 In view of the disposal of the First Appeal, Civil Application Nos.3245 of 2014 and 4623 of 2016 do not survive and the same are also disposed of.

(S.C. GUPTE, J.)