

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO.781 OF 2015****WITH****CIVIL APPLICATION NO.2423 OF 2015****IN****FIRST APPEAL NO.781 OF 2015**

The New India Assurance Co. Ltd. ...Applicant/Appellant

vs.

Mrs. Surayya Rafik Shaikh And Ors. ...Respondents

WITH**CIVIL APPLICATION NO.1289 OF 2016****IN****FIRST APPEAL NO.781 OF 2015**

Mrs. Surayya Rafik Shaikh And Ors. ...Applicants

vs.

The New India Assurance Co. Ltd. ...Respondent

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Ms. Poonam Mital, i/b. Shalini Shankar, for the Appellant.

Mr. Yuvraj P. Narvankar, for Respondent Nos. 1 to 4.

Ms. Manisha Madke, i/b. Res Juris, for Respondent No.8.

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CORAM : S.C. GUPTE, J.**DATED : 2 MAY 2017****P.C. :**

. Heard learned Counsel for the parties.

2. The First Appeal challenges a judgment and award of compensation passed by MACT, Pune in a Motor Accident Claim Petition.

The Appellant is an Insurance Company. Respondent Nos. 1 to 5 are legal heirs of the deceased accident victim. The deceased died on 7 June 2009 in an accident with the insured truck whilst driving a car on the Pune Solapur National Highway. The Tribunal, in its impugned judgment and award, found the accident to have taken place due to rash and negligent driving of the truck owned by Respondent No.6(Original Opponent No.1) and insured with the Appellant herein (Original Opponent No.2) as also a container truck owned by Respondent No.7 and insured with Respondent No.8 (respectively, Opponent Nos. 3 and 4). The Tribunal held that there was composite negligence on the part of the two vehicles owned, respectively, by Opponent Nos. 1 and 3 and insured, respectively, with Opponent Nos. 2 and 4. On these facts, the Tribunal awarded compensation of Rs.11,87,500/- jointly and severally against Opponent Nos. 1 and 2 and of Rs.11,87,500/- jointly and severally against Opponent Nos. 3 and 4, with interest at the rate of 7.5% per annum from the date of the application till payment or realization. Opponent Nos. 3 and 4 have not come in appeal. The present appeal is restricted only to Opponent Nos. 1 and 2.

3. The main ground of challenge on the part of the Appellant Insurer (Original Opponent No.2) appears to be that the deduction of personal expenses and living expenses of the deceased, which are calculated at 1/4th the amount of income, should have been calculated at 1/3rd the amount. With a view to seek final disposal of the appeal at this stage itself rather than going through a hearing of the appeal, learned Counsel for Respondent Nos. 1 to 5(Original Applicants) is agreeable to have the deduction made on the basis of 1/3rd instead of

1/4th insofar as the compensation awarded against Opponent Nos. 1 and 2 is concerned. The compensation awarded against Opponent Nos. 1 and 2, upon making adjustment of deduction towards personal expenses at the rate of 1/3rd, instead of $\frac{1}{4}$ adopted by the Trial Court, works out to Rs. 10,62,500/-.

4. The First Appeal is, accordingly, partly allowed by substituting the figure of Rs.11,87,500/- in para 3 of the operative part of the order by figure of "Rs.10,62,500/-". Rest of the order is sustained. Both Opponent No.2 as well as Opponent No.4 - Insurance Company have deposited in the Trial Court the compensation respectively awarded against them by the Trial Court. Respondent Nos. 1 to 5(Original Claimants) shall be entitled to withdraw the compensation amount in accordance with the impugned award as modified by this order.

5. In view of the disposal of the First Appeal, the Civil Applications do not survive and the same are also disposed of.

(S.C. GUPTE, J.)