Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL ST NO.30789 OF 2013

WITH

CIVIL APPLICATION NO. 4409 OF 2013

AND

CIVIL APPLICATION NO. 4060 OF 2015

AND

CIVIL APPLICATION NO. 4410 OF 2013

AND

CIVIL APPLICATION ST NO. 19941 OF 2014

The Oriental Insurance Co Ltd …Appellant
Versus
Chabibai Ananta Khandagale & Ors …Respondents

Mr R Mehta, *i/b KMC Legal Venture, for the Appellant.*
Ms Rina Kundu, *for Respondents Nos. 1 to 4.*

CORAM: G.S. PATEL, J
DATED: 18th July 2017

PC:-

1. The Appeal is against an order dated 10th January 2013. The Applicants are the heirs of one Ananta Bhiku Khandagale who died in a motor accident on 25th January 2005. The Applicants are his widow, minor children and parents. The deceased was going along with his handcart on the New Andheri Ghatkopar Link Road when auto rickshaw No. MH-03-V-8149 crashed into him from behind. The auto rickshaw driver was negligent. The deceased was taken to the Rajawadi Hospital, Ghatkoper but died on 26th January 2005, the next day.

2. The Insurance Company took a plea that it was not liable because the driver of the auto rickshaw did not hold a license. It led evidence. The Tribunal found in its favour and held on the material before it that there was no doubt while he was driving the rickshaw the driver did not have a valid license. The Court then consider whether this was sufficient to absolve the insurer of liability. Ultimately it awarded Rs 4 lakhs in compensation inclusive of NFL and interest at the rate of 7.5% per annum. Rs 2 lakh was directed to be paid to the widow and the remainder apportioned between the other Claimants.

3. The only difficulty with the order, as I see it, is that while it correctly stated that the liability was joint and several, the MACT Mumbai ought to have directed the insurer to pay and then to recover the amount from the insured in view of the findings in regard to the validity of the driving license. Other than this the impugned order calls for no interference.

4. The decree is modified accordingly to permit the insurer to pay the amount and to recover the rest including in execution proceedings from the insured.

5. The insurer has deposited the entire amount with accrued interest. The Claimants will be entitled to withdraw the entire amount deposited with all accrued interest. The statutory deposit of Rs. 25,000/- with all accrued interest will also be transferred to the MACT Mumbai. It will be further invested till withdrawal.

6. The MACT Mumbai will permit the withdrawal acting on an authenticated copy of this order.

7. The First Appeal is disposed of in these terms. There will be no order as to costs.

8. All Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J)