IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 668 OF 2012

Bajaj Alliance General Insurance Co. Ltd. …Appellant

Versus

Bakulabai Ramchandra Barge & Anr. …Respondents

WITH
CIVIL APPLICATION ST. NO. 8609 OF 2017
IN
FIRST APPEAL NO. 668 OF 2012

Bakulabai Ramchandra Barge …Applicant

Versus

Bajaj Alliance General Insurance Co. Ltd. …Respondent

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Ms.Yogita Deshmukh Chitnis for the Appellant.
Mr.Venkatesh Shastry for the Respondent No.1 and the Applicant in Civil Application St. No. 8609 of 2017.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 07, 2018**

P.C.:

1. Admit. By consent of the parties, the First Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the judgment and award dated

25.11.2011 passed by the learned Ex Officio Member, Motor Accident Claims Tribunal, Karad in M.A.C.P. No. 153 of 2010 thereby granting compensation of Rs. 4,79,700/- with interest @ 6% p.a. from the date of the Petition.

3. The claim application is filed by the applicant /mother of deceased Santosh Ramchandra Barge under section 163-A of the Motor Vehicles Act, 1998. The deceased was driving a tractor from Masur to Sahyadri Sugar Factory Road. The said tractor dashed against the truck bearing registration no. MH-11/M-5566. Due to the dash, Santosh Barge sustained multiple injuries and lost his life. The applicant /mother of the deceased filed the claim application and claimed that his son was earning Rs.3300/- p.m. from agricultural income. Opponent no.1 i.e., owner of the offending truck has filed written statement. At the time of accident, the offending vehicle of opponent no. 1 was insured with the appellant/ insurance company. The appellant/ insurance company appeared in the matter and filed written statement resisting the claim. On the basis of oral and documentary evidence, the learned Member of the tribunal granted compensation of Rs. 4,79,700/- with interest @ 6% p.a. Being aggrieved by the judgment and award passed by the learned

Member of the tribunal, the appellant/insurance company has filed this Appeal.

4. The learned Counsel for the appellant submits that the appellant/ insurance company has filed this Appeal on the point of contributory negligence, as deceased himself was negligent because he gave dash to the truck stationed at the side of the road. She further submits that another challenge is on the point of monthly income of the deceased. She further submits that it is claimed that the deceased was getting Rs. 3300/- p.m. from agricultural source. Out of the said amount, he used to give her Rs. 2200/- p.m. for housing expenses and, therefore, the tribunal ought to have considered the dependency to the extent of Rs. 2200/- p.m.

5. The learned Counsel for respondent no.1 has supported the judgment and award passed by the learned Member of the tribunal.

6. Perused the impugned judgment and award, evidence and documents. The applicant/mother has filed the claim application under section 163-A of the Motor Vehicles Act and hence, the amount of the compensation is to be calculated on the basis of structured

formula. The deceased was admittedly earning less than Rs. 40,000/- per annum. The mother stepped in the witness box and deposed that her deceased son was drawing monthly income of Rs. 3300/- per month. The applicant/mother has produced 7 X 12 extract of the land standing in the name of her deceased son. In para 12 of the judgment and award, the learned Member of the tribunal has mentioned the area of the said land as 54 Aars. It shows that the deceased was owner of the said land and, therefore, it can be reasonably accepted that he was getting Rs. 3300/- per month from agricultural source. The statement of the applicant/mother that her deceased son used to give her Rs.2200/- per month towards personal and living expenses is accepted and, therefore, his income cannot be accepted at Rs. 2200/- per month. Hence, his income is to be considered at Rs. 3300/- per month and as per structured formula, 1/3rd of his annual income is required to be further deduced for his personal and living expenses. If at all his income is fixed at Rs. 3300/- p.m., then it will amount double deduction further. This is an application filed under section 163-A of the Motor Vehicles Act and the finding on the point of negligence is not available with the insurance company in view of the judgment passed by the Supreme Court in the case of **United India Ins.Co.Ltd. vs Sunil Kumar in**

Civil Appeal No. 9694 of 2013. Hence, First Appeal is disposed of.

7. In view of disposal of First Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)