

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 1149 OF 2014

United India Insurance Co. Ltd.	...	Appellant
V/s.		
Rashmi Hanumant Waghmare & Ors.	...	Respondents

- Mr.Rahul Mehta i/b. KMC Legal Venture for the Appellant.
- Ms.Poonam Mital for Respondent No.7.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Learned counsel for the Appellant submits that as the private paper-book was not filed within the stipulated time, the Appeal came to be dismissed for default and hence, it needs to be restored.

2] Considering that very short point is involved in the Appeal, on the oral request of learned counsel for the Appellant, the Appeal is restored to its original file, considering that the filing of the private paper-book is not required in this case and the judgment of the Tribunal is itself sufficient to dispose of the Appeal.

3] The Appeal is preferred by the Insurance Company on two grounds. Firstly on the ground that the Tribunal has awarded 30% of the income of the deceased towards the future prospects and therefore, the Appellant-Insurance Company is aggrieved thereby. However, considering the judgment of the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., 2017 ACJ 2700*, having regard to the age of the deceased was 42 years and the fact that he was in service, the amount of compensation which is required to be awarded towards the future prospect is 30% of the income earned by the deceased. Hence, no fault can be found in the impugned judgment and award on that score.

4] The second ground on which the Appeal is challenged is that, the offending vehicle was not insured at the relevant time. However, the judgment of the Tribunal shows that, though the burden was upon the Insurance Company to show that the vehicle was not insured at the relevant time, no evidence is brought on record to that effect.

5] In view thereof, no fault can be found in the impugned judgment and award passed by the Tribunal. The Appeal therefore being without merit, stands dismissed.

6] The statutory amount of Rs.25,000/- deposited in this Court, if not transferred, be transferred to the concerned Tribunal along with accrued interest, if any.

7] In view of disposal of the Appeal, nothing survives in the Civil Application, hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]