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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.545 OF 2018

FIRST APPEAL (ST) NO.19167 OF 2017
WITH
CIVIL APPLICATION NO.546 OF 2018.
WITH
CIVIL APPLICATION(ST) NO.22875 OF 2018

National Insurance Co.Ltd. ... Appellant.

V/s.
Mayur Prashant Khedekar and ors ... Respondents

Ms. S.S. Dwivedi, for the appellant.

Ms. Varsha Chavan, for respondent

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondents.

2] As the appeal is only on short point, it can be disposed off at the admission stage and therefore, taken up for final hearing.

3] This Appeal is directed against the judgment and award dated 24.10.2016, passed by Motor Accident Claims Tribunal, Mumbai in M.A.C.P No.769 of 2011, granting an amount of Rs.18,78,000/- to the respondent claimants as compensation with future interest at the rate of 9% per annum.

4] The appellant Insurance Company has filed this appeal on two fold grounds. First ground is that the driver of the offending vehicle was not holding valid and effective driving licence and hence there was breach of terms and conditions of the insurance policy. However, as observed by the Tribunal, the burden to prove the breach of the insurance policy was on the Insurance Company, but the Insurance Company has not produced on record any document from the R.T.O. Officer, or otherwise to prove breach of terms and conditions of the policy to show that the driver was not holding valid and effective driving licence or it was fake one. Therefore, on this ground, the award cannot be set aside.

5] Second ground is that the quantum of compensation as awarded by the Tribunal is on higher side. To that extent in the considered opinion of this Court, there is substance.

6] As rightly submitted by learned counsel for appellant , the Tribunal has granted 50% of the amount towards future prospects which, In view of the judgment of the Apex Court, in case of **National Insurance Co.Ltd -vs- Pranay Sethi and ors [2017 ACJ 2700],** will have to be 40% of the amount of income.

7] As regards the income of the deceased, there is no dispute that it was Rs.8,000/- per month which comes to Rs.96,000/- per annum + future prospect at the rate of 40% which comes to Rs.38,400/- = Rs.1,34,400/-. The Tribunal has rightly deducted 1/4th of the said amount towards personal expenses and therefore, that amount comes to Rs.33,600/-. If it is deducted from amount of Rs.1,34,400/-, it comes to Rs.1,00,800/- per annum towards loss of dependency.

8] The multiplier applied by the Tribunal is "16" and it is not challenged and it is proper, having regard to the age of the deceased as 35 years. Therefore, applying the said multiplier, the amount comes to that is Rs.1,00,800 x 16 = Rs.16,12,800/-. As per judgment of National Insurance Co. -vs- Pranay Sethi, (supra), the claimants are also entitled to amount of Rs.70,000/- towards conventional heads. Thus, the total amount which the claimants are entitled to comes to Rs.16,82,800/-.

9] Accordingly the award passed by the Tribunal is partly modified and it is directed that the claimants are entitled to get amount of compensation of Rs.16,82,800/- with interest as awarded by the Tribunal.

10] If any excess amount is deposited by the Insurance Company, the Company is entitled to withdraw the said amoiunt with proportionate interest thereon.

11] Amount of Rs.25,000/-, be transferred to the Tribunal with accrued interest thereon.

12] Appeal stands disposed off in above terms.

13] In view of disposal of Appeal, pending Civil Applications therein no more survive and they are disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]