IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL ST. NO. 9948 OF 2010

The New India Assurance Company Ltd. Appellant

Versus

Deubai Rajaram Shinde
& others Respondent

Mr. A.B. Kadethankar, advocate for appellant.
Mr. T.G. Gaikwad, advocate for respondents no. 1 to 5.

CORAM : P.R. BORA, J.
DATE : 11th FEBRUARY, 2019

PER COURT:

1. Issue notice to respondents. Learned counsel Mr. Gaikwad waives service of notice on behalf of respondents no. 1 to 5. Service to other respondents is exempted. Service is complete. The matter is directed to be immediately taken up for hearing.

2. Heard Mr. Kadethankar, learned counsel for the appellant and Mr. Gaikwad, learned counsel for respondents no. 1 to 5 i.e. original claimants. Today only, the delay of two days which has occurred in filing the appeal has been condoned by this Court and with the consent of the parties, the matter is immediately taken up for hearing.

3. The insurance company has preferred the present appeal challenging the impugned judgment and award on three grounds; firstly that the tribunal has erred in holding income of

the deceased to the tune of Rs. 5,000/- per month notionally, secondly that the objection as regards not holding valid driving licence by the driver of the offending tempo has not been appreciated by the tribunal and thirdly that the allegation made by the insurance company that not the driver but the cleaner of the offending tempo who was not holding valid driving licence was driving the vehicle at the relevant time.

4. On perusal of the judgment, it is however revealed that since the insurance company has failed in substantiating the defence raised by it by adducing evidence in support thereof, the tribunal has rejected the said objection. I do not see any infirmity in the findings so recorded by the tribunal. The only objection that remains to be considered is as about the quantum of compensation.

5. It is the contention of the insurance company that the tribunal has wrongly held the income of the deceased notionally to the tune of Rs. 5,000/- per month. According to it, the tribunal could not have held the income by applying the criteria of notional income of more than Rs. 5,000/- per month. However, I do not find any substance in the objection so raised. Having regard to the fact that the accident had occurred in the year 2008, the tribunal has rightly held the income of the deceased notionally to the tune of Rs. 5,000/- per month. After having considered the discussion made by the tribunal, it does not appear that the tribunal has committed any error in determining the amount of compensation. The objections so raised by the appellant-insurance company are devoid of any substance and the appeal deserves to be dismissed

and is accordingly dismissed however, without any order as to costs.

6. The amount of compensation deposited by the appellant – insurance company before the tribunal is permitted to be withdrawn by the claimants alongwith interest accrued thereon in terms of the award passed. The amount deposited by the insurance company in this court by way of statutory deposit or otherwise shall be transmitted to the Motor Accident Claims Tribunal, Beed so as to facilitate its withdrawal by the claimants.

7. Pending civil application, if any, does not survive and stands disposed of.

(P. R. BORA, J)

dyb