IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 907 OF 2018
WITH
CIVIL APPLICATION NO. 2100 OF 2018
WITH
CIVIL APPLICATION NO. 2201 OF 2019
IN
FIRST APPEAL NO. 907 OF 2018

Reliance General Insurance Co. Ltd. ....Appellant
V/s.
Sunita Sunil Patil & ors. ....Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the appellant.
Mr. Bhushan Walimbe for respondent nos.1 to 4.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 25th JUNE, 2019.

ORAL JUDGMENT :-

. At the outset, Mr. Rahul Mehta, learned counsel for the appellant states that the appellant has not raised any statutory defence. Hence, notice to respondent no.5 is dispensed with. The learned counsel for respondent nos.1 to 4 also makes a statement that these respondents do not wish to file any cross objections or cross appeals. With consent, the appeal is heard finally at the stage of admission.

2. The appellant herein has challenged the judgment and award dated 05/01/2018 passed by the Motor Accident Claims Tribunal,

Kolhapur in MACP No. 573/2014. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.33,20,814/- with interest @ 7% p.a. from the date of the petition till its actual realization.

3. The respondent no.1 is a widow and the respondent nos.2, 3 and 4 are the children of the deceased Sunil Govind Patil, who expired in a motor vehicular accident on 23/03/2014 involving motorcycle TVS Sport No.MH-09-DE-4989. It was the case of the respondent nos.1 to 4 that on the relevant day, while the deceased-Sunil Patil was proceeding from Bambawade to Malkapur, the offending vehicle which was owned and driven by the respondent no.5 came at a high speed and dashed against his Splendor motorcycle. Said Sunil Patil expired as a result of the injuries sustained in the said accident. The respondent nos.1 to 4 claimed that the accident was caused solely due to rash and negligent driving by the driver of the offending motorcycle. The said motorcycle was insured by the appellant – insurance company. The respondent nos.1 to 4, therefore, filed a petition under Section 166 of M.V. Act claiming total compensation of Rs.31,60,000/-.

4. The respondent no.5 did not contest the proceedings despite due

service. The appellant – insurance company did not raise any statutory defence but contended that the amount claimed by the respondent nos.1 to 4 was excessive.

5. The Tribunal, after considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal considered the annual income of the deceased as Rs.2,40,655/-. Upon adding 30% towards future prospects, deducting 1/4th towards personal expenses and applying multiplier of 14, the Tribunal assessed the loss of dependency at Rs.33,50,814/-. The Tribunal awarded Rs.70,000/- towards other conventional heads and thus awarded total compensation of Rs.33,20,814/- with interest @ 7 % p.a. from the date of the petition till final realization. Being aggrieved by this judgment and award, the appellant – insurance company has preferred this appeal.

6. Heard Mr. Rahul Mehta, the learned counsel for the appellant and Mr. Bhushan Walimbe, learned counsel for respondent nos.1 to 4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. Shri Rahul Mehta, the learned counsel for the Appellant submits that the challenge in the appeal is restricted only to the quantum of compensation awarded by the Tribunal. In the light of the said statement, the only question for determination is whether the compensation awarded by the Tribunal is just and reasonable.

8. The records reveal that the deceased Sunil Patil was 42 years of age and had four dependents. The deceased Sunil was employed as a clerk in Ajara Urban Co-operative Bank Ltd. The Respondent Nos.1 to 4 /original claimants had examined AW-2 Vilas Patil, the Branch Manager of the Bank. He had produced salary statement of the deceased (Exh.29) for the period from November-2003 till March-2014. A perusal of the said statement clearly indicates that the deceased was drawing salary of Rs.16,087/- per month and that he was paid Rs.16087/- per annum as Diwali Bonus. The Respondent Nos.1 to 4 had also relied upon Form-16 (Exhibit-30) for the Assessment Year-2013-2014 and 2014-2015. Relying upon these tax returns, the Tribunal has considered the annual income of the deceased as to Rs.2,38,155/-. The Tribunal has not given any reasons for discarding the evidence of AW-2 Vilas Patil as well as salary statement at Exhibit (29) and /or relying upon the tax returns, which

were filed post accident, for the purpose of assessing loss of dependency. The learned counsel for the Respondent Nos.1 to 4 also fairly concedes that the Tribunal ought to have computed loss of dependency on the basis of annual income as stated in the salary certificate at Exhibit-29.

9. The annual income of the deceased Sunil Patil, as per the salary certificate at Exh.29 was Rs.1,93,044/-. Adding Rs.16,087/- which was paid to the deceased as Diwali Bonus per annum and adding 30% towards future prospects, the total income works out to Rs.2,71,870/-. Upon deducting 1/4th towards personal expenses and applying multiplier of 14, having regard to the age of the deceased, loss of dependency works out to Rs.28,54,642/-. Adding Rs.70,000/- on other conventional heads viz. loss of estate, loss consortium and funeral expenses, the total compensation works out to Rs.29,24,642/- which can be rounded to Rs.30,00,000/-.

10. Under the circumstances, and in view of discussion supra, the appeal is partly allowed. The impugned judgment and award is modified to the extent of reducing the compensation to Rs.30,00,000/- as against the compensation of Rs.33,20,814/- as awarded by the

Claims Tribunal. The Respondent Nos.1 to 4 are entitled for interest and costs as awarded by the Tribunal. The excess amount deposited by the insurance company along with proportionate interest be refunded to the Appellant -insurance company.

11. Civil Applications stand disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)