IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1179 OF 2014
WITH
CIVIL APPLICATION NO. 3357 OF 2014
IN
FIRST APPEAL NO. 1179 OF 2014

The New India Assurance Co. Ltd. ....Appellant
V/s.
Shakuntala Ramdas Mane and ors. ....Respondents

Mr. Sudhakar Pandaram i/b. Milind More for the appellant.
Mr. Ravi G. Shinde for respondent nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 03rd JUNE, 2019.

P.C.:-

. With consent, heard finally at the stage of admission.

2. The appellant / insurance company has challenged the judgment and award dated 20/01/2014 in MACP No.981/2007 passed by the Member, Motor Accident Claims Tribunal, Pune.

3. Heard the learned counsel for the appellant and the learned counsel for respondent nos.1 and 2.

4. The respondent nos.1 and 2 had filed an application under

section 166 of Motor Vehicles Act in view of death of their son Santosh Mane in a motor vehicular accident on 17/12/2006. The case of the respondent nos.1 and 2 was that on the relevant date, the deceased was travelling on motorcycle no.MZE 3967. When he had reached near Pashankar Showroom, a tanker bearing RTO No.MH 04CG 2451 which was driven by one Akram Khan dashed against the motor cycle resulting in death of their son Santosh Mane. It is the case of respondent nos.1 and 2 that the death of deceased Santosh Mane was due to rash and negligent driving by the driver of vehicle.

5. The respondent nos.1 and 2 had claimed that the deceased was working with Bamboat and Co., Pimpri and was earning Rs.4,000/- per month. He was the only earning member in the family. The respondents being the dependants had claimed total compensation of Rs.5,00,000/-.

6. The owner of the offending vehicle did not contest the proceedings. The appellant – insurance company disputed that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The insurance company also took a defence of breach of terms and conditions of the policy.

7. The learned Tribunal, upon considering the evidence adduced by the respective parties held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. Upon considering the monthly income of the deceased as Rs.4,000/- and after deducting 50% towards personal expenses and further adding 50% for future prospects and applying multiplier of 18, the Tribunal awarded the total compensation of Rs.7,73,000/-. Relying upon the decision of the Apex Court in ***National Insurance Company Ltd. V/s. Swaran Singh and ors.***, the Tribunal has held that the insurance company cannot be exonerated of its liability to pay compensation to third party for breach of terms and conditions of the policy by the insured. The Tribunal therefore directed the appellant to deposit the compensation with liberty to recover the same from the owner of the offending vehicle.

8. The impugned judgment is challenged mainly on the issue of negligence. The learned counsel for the appellant contends that the accident was not caused solely due to rash and negligent driving by the driver of the offending vehicle. The learned counsel for the appellant – insurance company claims that it was the case of the contributory negligence and that the Tribunal has not considered this aspect.

9. The Tribunal upon considering the evidence adduced by the respective parties has recorded a categorical finding that the accident was caused due to rash and negligent driving by the driver of the offending tanker. The Insurance Company had not raised plea of contributory negligence. The appellant – insurance company has also not refuted the evidence adduced by the respondent / claimant on the issue of negligence. Consequently, the compensation cannot be reduced on the ground of contributory negligence.

10. As regards the quantum of compensation, it is seen that the deceased was 23 years of age and was unmarried. The respondents have duly proved that he was employed with Bamboat and Co. and was earning monthly salary of Rs.4,000/-. The Tribunal has deducted 50% towards his personal expenses. Considering the age of the deceased, the Tribunal has applied the multiplier of 18. Upon considering future prospects and the other conventional heads viz. loss of love and affection, funeral expenses, etc. the Tribunal has awarded total compensation of Rs.7,73,000/- which in my considered view is just, fair and reasonable.

11. The judgment and award does not suffer from any illegality.

Appeal has no merits and is accordingly dismissed. Civil Application stands disposed of in view of dismissal of the Appeal.

(SMT. ANUJA PRABHUDESSAI, J.)