IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 88 OF 2014
WITH
CIVIL APPLICATION NO. 2132 OF 2012
IN
FIRST APPEAL NO. 88 OF 2014

ICICI Lombard General Insurance Co. Ltd. ….Appellant
V/s.
Natu Harlal Chaudhary and ors. ….Respondents

Mr. Rahul Mehta I/b. KMC Legal Venture for the appellant.
None for the respondents.

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

ORAL JUDGMENT :-

. With consent of the parties, the appeal is heard finally at the stage of admission.

2. The appellant – insurance company has challenged the judgment and award dated 06/02/2012 in MACP No.50/2009 passed by the learned Member, MACT, Thane. By the impugned judgment and award, the Claims Tribunal has awarded compensation of Rs.9,16,000/- @ 7 % p.a. from the date of the application till its realization.

3. The respondent nos.1 and 2 who are the original claimants are the parents of the deceased Manoj Chaudhary who expired in a motor vehicular accident on 15/11/2008 involving a tanker bearing No.MH12-CT-5411. It was the case of the claimants that on the relevant date, the deceased Manoj was proceeding towards Panvel by his motorcycle bearing No.MH06-AD-3214. When he reached at Belnaka, the offending vehicle came at a very high speed and dashed against his motorcycle. Said Manoj Chaudhary expired as a result of the injuries sustained in the said motor vehicular accident. The claimants have stated that the accident was caused solely due to rash and negligent driving by the driver of the tanker, which was owned by the respondent no.3 and insured by the appellant – insurance company. The respondent nos.1 and 2, therefore, filed a Claim Petition under section 166 of Motor Vehicles, Act claiming total compensation of Rs.8,00,000/-.

4. The respondent no.3 did not contest the proceedings despite due service. The appellant – insurance company resisted the claim on the ground that the driver of the tanker did not possess a valid driving license. The appellant – insurance company claimed that it is not liable to indemnify the insured for breach of terms and conditions of the

policy.

5. The Tribunal, after considering the evidence on record, has recorded a finding and held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal also held that the deceased Manoj Chaudhary was earning Rs.9139.64/- per month. After deducting 50% towards his personal expenses, monthly income was considered to be 4,500/- and annual income was considered to be Rs.54,000/-, 50% of the income was added towards future prospects and after applying multiplier of 11, loss of dependency was assessed as Rs.8,91,000/-. The Tribunal awarded further amount of Rs.25,000/- towards other conventional heads and hence, awarded total compensation of Rs.9,16,000/-. Being aggrieved by this judgment and award, the appellant – insurance company has preferred this appeal.

6. Mr. Rahul Mehta, the learned counsel for the appellant has restricted the challenge only to the liability of the appellant – insurance company to indemnify the insured. The learned counsel for the appellant submits that the appellant is not liable to indemnify the insurer in view of breach of terms and conditions of the policy.

7. A perusal of the written statement indicates that the appellant – insurance company had not raised the plea of breach of terms and conditions of the policy and as a consequence, no issue in this regard was framed. The appellant – insurance company had not adduced any evidence to prove that the insured had committed breach of terms and conditions of the policy. In the absence of such relevant pleadings and proof, the appellant – insurance company cannot be absolved of its liability of indemnifying the insured.

8. Under the circumstances and in view of the discussion supra, the challenge has no merits. The appeal is dismissed. Civil Application stands disposed of in view of dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)