IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 603 OF 2016
WITH
CIVIL APPLICATION NO. 1447 OF 2016
IN
FIRST APPEAL NO.603 OF 2016

National Insurance Co. Ltd. ….Appellant
V/s.
Sharda Balkrishna Kamalelu and ors. ….Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the appellant.
Mr. Rajesh A. More a/w. Mr. Amey V. Chandorkar
for respondent nos.3 and 4.
Mr. Rajan S. Pawar for respondent no.7.

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

ORAL JUDGMENT :-

. The respondent nos.1, 3, 4 and 7 who are the original claimants have stated that they do not intend challenging the impugned judgment. The respondent no.5, the owner of the offending vehicle has not contested the proceedings. The learned counsel for the appellant and the respondent nos.1, 3, 4 and 7 have stated that considering the narrow controversy involved in the appeal, the same can be disposed of at the stage of admission. Hence, with consent, the appeal is heard finally at the stage of admission.

2. The appellant – insurance company has challenged the impugned judgment and award dated 24/11/2014 passed by the learned Member, MACT, Pune in MACP No.686/2009. By the impugned judgment and award, the Claims Tribunal has awarded total compensation of Rs.11,98,200/- with interest @ 9% p.a. from the date of the petition till final realization.

3. The respondent nos.1 is the mother, respondent nos.3 and 4 are the sisters and respondent no.7 is the wife of the deceased Arvind Balkrishna Kamlelu who expired in a motor vehicular accident on 14/04/2009 involving a truck bearing no.MH-04-DK293. It was the case of these respondents / claimants that on the relevant date, while the deceased Arvind was proceeding from Yerwada to Khadki on his bicycle, the offending truck bearing no. MH-04-DK293 dashed against his bicycle. Said Arvind expired as a result of the injuries sustained in the said accident. The respondents / claimants claimed that the accident was caused solely due to rash and negligent driving by the driver of the said truck. They claim that the deceased was a driver and was earning Rs.10,000/- per month. He was the only earning member of the family. They filed a petition under Section 166 of the Motor Vehicles Act claiming total compensation of Rs.1,00,000/-.

4. The respondent nos.1 and 2 did not contest the proceedings. The appellant – insurance company disputed its liability to indemnify the insured mainly on the ground that the driver was not holding a valid and effective driving license. The appellant – insurance company also claimed that the accident was caused due to the negligence of the deceased and hence the respondents / claimants are not entitled for compensation.

5. Upon considering the evidence adduced by the claimants, the Tribunal held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal considered the monthly income of the deceased as Rs.7,800/- per month and deducted 1/4th towards his personal expenses. Considering the age of the deceased, the Tribunal applied multiplier of 12 and assessed loss of dependency as Rs.11,23,200/-. In addition, the Tribunal awarded compensation of Rs.25,000/- towards loss of love and affection to the claimant nos.1 and 2, Rs.25,000/- towards funeral expenses, Rs.25,000/- to the claimant no.4 towards loss of consortium. Thus, the Tribunal awarded total compensation of Rs.11,98,200/-. The Tribunal held that the driver of the offending vehicle did not hold valid and effective driving license, and hence gave liberty to the appellant –

insurance company to recover the compensation from the insured. Being aggrieved by the impugned judgment, the appellant – insurance company has filed this appeal under Section 173 of Motor Vehicles Act.

6. Mr. Rahul Mehta, the learned counsel for the appellant – insurance company states that since the driver was not holding valid and effective driving license, the Claims Tribunal ought to have exonerated the appellant – insurance company. It may be mentioned that in case of ***Shamanna and ors. v/s. The Divisional Manager, the Oriental Insurance Co. Ltd. and ors. 4(2018) 9 SCC 650*** and ***Parminder Singh v/s. New India Assurance Co. Ltd. and ors. (Civil Appeal No.5123 of 2019),*** the Apex Court has reiterated that if the driver of the offending vehicle does not possess a valid driving license, the principal of 'pay and recover' can be ordered to direct the insurance company to pay the victim and then recover the amount from the owner of the offending vehicle.

7. In the instant case, the Tribunal has held that the driver was not holding a valid and effective driving license and has directed the insurance company to pay the said amount and recover the same from the insured. The insured had not contested the proceedings and has

not challenged the impugned judgment. Under the circumstances and in view of the principles enunciated in ***Shamanna*** (supra), there is no error or illegality in directing the appellant – insurance company to pay the compensation and recover the same from the insured.

8. As regards the quantum of compensation, it is seen that the claimants had claimed that the deceased was earning Rs.8,500/- per month. The Tribunal has not accepted the said contention. The Tribunal has observed that the deceased was a driver and that the minimum wage payable to the driver was Rs.300/- per day. The Tribunal therefore considered the monthly income of the deceased as Rs.7,800/- and deducted 1/4th towards personal expenses of the deceased. The deceased was 32 years of age and applying multiplier of 16, assessed loss of dependency to Rs.11,23,200/- which in my considered view is just and proper.

9. It may be mentioned that in ***National Insurance Co. Ltd vs Pranay Sethi and ors.,*** the Apex Court has quantified the compensation towards the other three conventional heads viz. loss of estate, loss of consortium and funeral expenses as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. Hence, the widow of the deceased would be

entitled for compensation of Rs.40,000/- for loss of spousal consortium and the claimants would be entitled for Rs.30,000/- towards loss of estate and funeral expenses. In the instant case, the Tribunal has awarded total compensation of Rs.75,000/- as against Rs.70,000/- on the non pecuniary heads. Since the amount awarded in excess is only a meager amount of Rs.5,000/-, I am not inclined to interfere with the impugned judgment and award dated 24/11/2014 passed by the MACT, Thane in MACP No.686/2009.

10. Under the circumstances and in view of discussion supra, the Appeal is dismissed. Civil Application stands disposed of in view of dismissal of the appeal.

Preeti H. Jayani

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(SMT. ANUJA PRABHUDESSAI, J.)