IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 214 OF 2017
WITH
CIVIL APPLICATION NO. 3022 OF 2013

The New India Assurance Co. Ltd. … Appellants
V/s.
Smt. Rabiya Mohd. Yusuf Mohd.
Sultan (since deceased)through
Legal heirs … Respondents

Mr. D.R. Mahadik for the Appellant.
Mr. V.M. Parkar for Respondent No.1.

CORAM: K.K.TATED, J.
DATED : 16/09/2019

P.C.

1 Heard learned Counsel for the parties.

2 By this First Appeal, the Appellant Insurance Company is challenging the Judgment and Award dated 30.07.2012 passed by MACT, Mumbai in MACP No. 864 of 2000 holding that the Respondents original Claimants are entitled to a sum of Rs.90,602/- by way of compensation with interest @ 7.5 % p.a. from the date of filing of the application till realisation of the entire amount.

3 The learned Counsel for the Appellant submits that in the present proceeding initially original Claimant Mohd Yusuf Mohd. Sultan filed application under Section 166 of the M.V. Act, 1988 for compensation, as he has sustained the injuries in the accident which occurred on 13.11.1998. During the pendency of the said application, the original Claimant died. Hence, Respondents-Claimants were brought on record as legal heirs. Thereafter, the

Respondents-Claimants claimed sum of Rs.2,00,000/- by way of compensation.

4 The learned Counsel for the appellant submits that Tribunal failed to consider the fact that the deceased was travelling in goods vehicle and there was a breach of terms and conditions of insurance police. He submits that if there is a breach of terms and conditions of insurance policy, then Insurance Company is not liable to pay any compensation. These facts were not considered by the Tribunal. Hence, they have good chance of success in the present proceeding. He submits that matter is required to be admitted and same to be heard on its own merits.

5 It is to be noted that in the present proceeding, the Tribunal on the basis of pleading framed following two issues for his consideration, which reads thus:

<u>ISSUES</u>

> *1. Whether the applicants prove that on 14/11/1998 in Zakir Hussain Nagar, on Mankhurd – Ghatkopar Link road, Mankhurd, Mumbai, the original applicant by named Mohd. Yusuf Mohd. Sultan (died during pendency of the claim) sustained the injuries, had taken place because of rash and negligent driving of Motor tempo bearing No. MH-03-N-1526?*
>
> *2. Whether the applicants are entitled to the compensation towards loss to the estate? If yes, what amount?*

6 Considering the submissions made by the learned Counsel for the Appellant, the following issues arise before Court for consideration.

1) Whether the amount awarded by the Tribunal is on higher side?

2) Whether the Appellant proved that there was any breach of terms and condition of insurance policy?

7 Bare reading of the judgment shows that the appellant failed to produce on record any documentary evidence to show that there was any breach of terms and conditions of insurance policy. The learned Counsel for the Appellant relies on para 12 of the impugned judgment, which reads thus:

> *"12. The Opponent humbly submit that they are liable to pay as per the terms and conditions of policy if issued in favour of Opponent party and if there is any breach of terms and conditions of policy then the said policy would be rendered void ab initio and in that event the Opponent would not be liable to pay anything to the applicant nor it will be liable to indemnify the Opponent party i.e. owner of the vehicle."*

8 Bare reading of paragraph 12 of the impugned judgment shows that the Appellant failed to raise any specific ground in their written statement about violation of terms and conditions of the insurance policy.

9 Apart from that after the death of injured, the Tribunal held that widow and children are entitled for compensation to the extent of loss of estate, loss of consortium and medical bills. The compensation awarded by the Tribunal is on lower side. The Tribunal has awarded sum of Rs.40,602/- towards the medical bills, Rs.25,000/- towards loss of Estate and Rs.25,000/- towards loss of consortium to the Claimant No.1 i.e. widow of deceased. In the present proceeding, the Claimant No.1 lost her husband.

10 Considering these facts and the compensation awarded by the Tribunal, which is on lower side, I am of the opinion that

appellant failed to make out any case about the violation of the terms and condition of insurance policy and compensation awarded by the Tribunal is not on higher side.

11 Hence, there is no substance in the First Appeal. Hence, following order is passed:

a) First Appeal stands rejected.

b) Civil Application No. 3022 of 2013 stands dismissed in view of rejection of First Appeal.

c) Amount, if any, deposited by the Appellant at the time of filing of the First Appeal before this Court, be transferred to the MACT, Mumbai in the account of Application No. 864 of 2000 along with accrued interest, if any.

(K.K.TATED, J.)