IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 30215 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 92 OF 2017
IN
FIRST APPEAL (ST) NO. 30215 OF 2016

Reliance General Insurance Company ….. Appellant/ Applicant

VERSUS

R.Anupama w/o. K.Ravichandran & Ors. ….. Respondents

Ms.Shalini Shankar for the Appellant/Applicant.

Mr.R.S.Alange, a/w. Mr.Ajit V.Alange for the Respondent nos.1 and 2.

CORAM : R.D. DHANUKA, J.

DATE : 5th NOVEMBER, 2019

P.C.

By this first appeal, the appellant (original respondent no.4) has impugned the judgment and award dated 1st April, 2016 passed by the learned Motor Accident Claim Tribunal, Solapur in Motor Accident Claim Petition No.110 of 2012 thereby allowing the claim of Rs.72,73,370/- made by the respondent nos. 1 and 2 with interest at the rate of 9% per annum from the date of claim petition till full realization of the amount within three months from the date of the said judgment and order.

2. On 25th October, 2011, in the evening Mr. K.Ravichandran boarded a luxury bus bearing no.KA-01/AA-5543 as a passenger in Mumbai to proceed towards Hyderabad via Solapur. On 26th October, 2011, at about 3.00 a.m., the said bus was proceeding towards

Hyderabad from Solapur. When the said bus reached within the limits of village Mulegaon in front of Ramdeo Ware House, at the said spot, on the road truck bearing no.KA-39/4236 was parked facing towards Hyderabad. The driver of the luxury bus in which the deceased was travelling, was also driving the bus rashly and negligently and dashed the said truck.

3. In the said accident, the said deceased sustained number of injuries to his head, chest, shoulder etc. The said person died on 14th November,2011 in Yashodhara Hospital, Solapur. The legal heirs of the said deceased filed a claim petition bearing no.110 of 2012 before the Motor Accident Claim Tribunal, Solapur *inter alia* praying for compensation in the sum of Rs.1 crore. In the said claim petition, the respondent nos. 1 and 2 (original claimant) impleaded the owner of the truck bearing no. KA-39/4236, the appellant herein, the owner of the luxury bus bearing registration no. KA-01/AA-5543 and the Oriental Insurance Company Limited. The claim was resisted by the respondents to the said claim petition including the appellant herein.

4. The Tribunal framed five issues for determination. The Tribunal rendered finding that the accident had occurred due to the negligence of the driver of the truck bearing no.KA-39/4236 and driver of the luxury bus bearing no. KA-01/AA-5543. The Tribunal also held that the claimant had proved the age of the said deceased at the time of accident, his occupation and his per month income at Rs.52,725/-. The appellant herein (original opponent no.2) had proved that there was a breach of terms of the insurance policy. Based on these findings, the Tribunal held that there was a composite negligent on the part of the driver of the luxury bus and the driver of the truck involved in the

accident. As the luxury bus was owned by the opponent no.3 and opponent no.4 was the insurer of the said luxury bus, they were liable to pay the compensation to the claimant.

5. Insofar as the original opponent no.1 is concerned, it is held that he was the owner of the truck involved in the accident and there was negligence on the part of the driver of the truck involved in the accident. The Tribunal also rendered a finding that the truck driver was not holding licence to drive the truck and the licence was for light motor vehicle only. The Tribunal accordingly held that amongst the drivers involved in the accident, it was reasonable to hold luxury bus driver negligent to the extent of 60% and truck driver to the extent of 40% in the facts and circumstances of this case. The Tribunal accordingly held that all the opponents including the appellant herein jointly and severally liable to pay to the claimant total compensation of Rs.72,73,370/- inclusive of NFL amount along with future interest at the rate of 9% p.a. from the date of petition till full realization of the amount within three months from the date of the said order.

6. In paragraph (6) of the said judgment and order, the Tribunal directed that the opponent no.1 had committed breach of the terms and conditions of the insurance policy. The appellant herein was accordingly made entitled to recover the amount of compensation from the original opponent no.1 by filing execution proceedings against him.

7. It is not in dispute that the opponent nos. 3 and 4 have already paid 60% amount to the respondent nos. 1 and 2 herein (original claimants). Insofar as remaining 40% is concerned, the Tribunal has directed the appellant herein and the original opponent no.1 jointly to

pay the said 40% amount to the respondent nos. 1 and 2. As far as original opponent no.1 is concerned, he has not challenged the said judgment and order dated 1st April, 2016 passed by the M.A.C.T.Solapur. The appellant has impugned the said judgment and order to the extent the appellant is directed to pay the amount at the first instance to the respondent nos. 1 and 2 herein.

8. Learned counsel for the appellant invited my attention to some of the findings rendered by the Tribunal and would submit that though the Tribunal has followed the principles laid down by various courts while directing the appellant to pay compensation amount first to the extent of 40% and thereafter to recover from the original opponent no.1, this court shall take a liberal view in the matter and shall reduce the compensation directed to be paid by the appellant at the first instance.

9. Learned counsel for the appellant does not dispute the principles of law laid down by the Supreme Court and this court in the various judgments referred by the Tribunal in the said judgment and order.

10. Mr. Alange, learned counsel for the respondent nos. 1 and 2 invited my attention to the judgment of supreme Court in case of ***S.Iyyapan vs. United India Insurance Company Limited and another, (2013) 7 SCC 62*** and in particular paragraphs 1 and 17 and would submit that even though the driver was holding a licence to drive a light motor vehicle but was driving commercial vehicle, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but was driving as commercial vehicle and no endorsement to drive commercial vehicle was obtained in the driving licence. He submits that Supreme Court in

the said judgment held that it is a statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event of there being any violation of any of the insurance policy.

11. Learned counsel strongly placed reliance on the judgment of Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi and Others, (2017) 16 SCC 680*** and in particular paragraphs 59.3 and would submit that all the compensation awarded by the Tribunal are in accordance with principles of law laid down by the Supreme Court and this court in various judgments which are already adverted to by the Tribunal in the impugned judgment and order and thus no interference is warranted in the said judgment and order.

12. In rejoinder, learned counsel for the appellant does not dispute that the appellant had not disputed the quantification of the income of the said deceased at the time of his death considered by the Tribunal.

13. A perusal of the judgment and order passed by the Tribunal clearly indicates that the Tribunal has held that the driver of the vehicle which was insured by the appellant was negligent along with the driver of the bus and had accordingly apportioned the compensation in the ratio of 40% : 60%.

14. The Tribunal had adverted to the judgment of Supreme Court in case of ***S.Iyyapan vs. United India Insurance Company Limited*** (supra), judgment of this court in case of ***Pepsu Road Transport***

Corporation vs. National Insurance Co. Ltd., 2013 ACJ 2440 and judgment of this court in case of ***United India Insurance Co. Ltd. vs. Jaswant Singh and others, 2013 ACJ 56***, and judgment of this court in case of ***National Insurance Co. Ltd. vs. Nanubai wd/o. Lomeshwar Tamgadge, 2014(1) Mh.L.J.250*** and in case of ***Oriental Insurance Co. Ltd. vs. Syed Ibrahim and others, 2007 ACJ 2816***. The Tribunal also considered the judgment of Supreme Court in case of ***Rajesh and others vs. Rajbir Singh and others, 2013(9) SCC 54*** and in case of ***Sarala Varma and others vs. Delhi Transport Corporation and another, 2009 AC 305(SC)***.

15. The Tribunal after computing the annual income of the deceased which is not disputed by the appellant in this case has awarded compensation towards loss of dependency, loss of consortium, funeral expenses, loss of support, shelter and love and affection quantified the claim at Rs.72,73,368/-.

16. A perusal of the judgments referred to aforesaid by the Tribunal and the law summarized by the Supreme Court in latest judgment case of ***National Insurance Company Limited vs. Pranay Sethi and Others*** (supra), I am of the view that the annual income of the said deceased not being in dispute, the other compensation are awarded by the Tribunal in accordance with the principles laid down by the Supreme Court in case of ***S.Iyyapan*** (supra) and in case of ***National Insurance Company Limited vs. Pranay Sethi and Others*** (supra).

17. I am not inclined to accept the submission of the learned counsel for the appellant that this court shall take any liberal view in the matter. The entire judgment and order passed by the Tribunal is passed after

adverting to the evidence laid down by the parties and the principles of law laid down by the Supreme Court and this court.

18. Though the driver of the bus was not having licence to drive the bus and was having the licence to drive the light motor vehicle, the appellant cannot escape its liability to pay the compensation to the claimant at the first instance. The Tribunal has already permitted the appellant to file an execution application for recovery of the amount against the original opponent no.1 who has not impugned the judgment and order passed by the tribunal. I am respectfully bound by the judgment of Supreme Court and this court which are referred to aforesaid and are clearly applicable to the facts of this case. I do not find any substance in the appeal preferred by the appellant. Appeal is accordingly dismissed.

19. The appellant has already deposited 40% amount which was found payable by the Tribunal against the appellant before the M.A.C.T.,Solapur. The respondent nos. 1 and 2 have withdrawn part of the amount deposited by the appellant. The respondent nos. 1 and 2 would be at liberty to withdraw the balance amount deposited by the appellant before the M.A.C.T.Solapur within two weeks from the date of communication of this order.

20. The parties as well as the M.A.C.T.Solapur to act on the authenticated copy of this order.

21. In view of the dismissal of the first appeal, Civil Application No.92 of 2017 for stay does not survive and is accordingly dismissed. No order as to costs.

22. The respondent nos. 1 and 2 would be at liberty to withdraw the entire amount deposited lying with the M.A.C.T.Solapur with accrued interest thereon. Office of this court is directed to transmit the statutory amount of deposit by the appellant to the M.A.C.T.Solapur expeditiously.

[R.D.DHANUKA, J.]