IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.58 OF 2018
WITH
CIVIL APPLICATION NO.293 OF 2019
IN
FIRST APPEAL NO.58 OF 2018

Smt. Pushpa Suryakant Vedpathak
and Anr. ...Applicant

In the matter between

Reliance General Insurance Company
Limited ...Appellant

Versus

Smt. Pushpa Suryakant Vedpathak
and Anr. ...Respondents

.....

Mr. Rahul Mehta with Mr. Nikhil Mehta I/b. M/s. KMC Legal Venture for the Appellant.
Mr. Vinod Prajapati with Mr. M.K. Sanghai for the Respondent Nos.1 and 2 and for the Applicant in CAF/293/2019.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 21st JUNE, 2019.

ORAL JUDGMENT:-

At the outset, the learned counsel for the Respondent Nos.1 and 2 make a statement that these Respondents, who are original claimants do not wish to file any cross appeal/cross objection. The Respondent No.3 is the insurer and since no statutory defence is raised, notice to the Respondent No.3 has been dispensed with vide order dated 17th January, 2018.

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

3. The Appellant has challenged the judgment and award dated 18th July, 2017 in M.A.C.P. No.411 of 2015 passed by the learned Additional Member, M.A.C.T., Pune.

4. By the impugned judgment and award the Claims Tribunal, Pune, has awarded compensation of Rs.28,38,336/- with interest at the rate of 9% per annum from the date of filing of the claim petition till realisation of the entire amount.

5. Brief facts to decide this appeal are as under:-

6. The Respondent No.1, is the widow and the Respondent No.2 is the son of the deceased Suryakant Pandurang Vedpathak, who expired in a motor vehicular accident on 28th March, 2014 involving auto rickshaw bearing No.MH-12/JS-0764. It is the case of the claimants that the offending vehicle dashed against Suryakant Vedpathak while he was crossing the road in front of G.P.O., Pune.

Said Suryakant expired as a result of the injuries sustained in the accident. The Claimants had stated that the accident was caused solely due to the rash and negligent driving of the driver of the said auto rickshaw.

7. It was the case of the Claimant that the deceased was working as a Peon in the office of Superintendent Technical Examiner No.1 and was earning salary of Rs.33,000/- per months. Claimants being the widow and son of the deceased filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 claiming total compensation of Rs.25,00,000/- from the Respondent No.3 being the Owner and the Appellant-Insurance Company, Insurer of the offending vehicle.

8. The Insured (Respondent No.3) as well as the Appellant-Insurance Company denied that the accident was caused due to rash and negligent driving of the driver of the offending vehicle. They claimed that the rickshaw was driven at a moderate speed by observing the traffic rules. It is their case that the deceased himself crossed the road without paying attention to the oncoming traffic. The Appellant-Insurance Company also claimed that the driver of the auto rickshaw

was not holding a valid and effective driving license and that the vehicle was driven without a valid permit. The Appellant-Insurance Company denied its liability to indemnify the insured for breach of terms and conditions of the policy.

9. The Claims Tribunal after considering the pleadings as well as on appreciating the evidence adduced by the respective parties held that the accident was caused due to the rash and negligent driving by the driver of the auto rickshaw. The Tribunal has also observed that the Appellant-Insurance Company has not adduced any evidence to substantiate its claim regarding the breach of terms and conditions of policy. The Claims Tribunal after computing the age and income of the deceased awarded compensation of Rs.28,38,336/-. Being aggrieved by the impugned order, the Appellant-Insurance Company has preferred this Appeal.

10. It is not in dispute that a crime was registered against the driver of the offending vehicle for driving the vehicle in a rash and negligent manner and causing death of Suryakant Vedpathak and thereby committing offences punishable under Sections 279 and 304 of the IPC. Mr. Rahul Mehta, the learned counsel for the Appellant-

Insurance Company submits that the driver has been acquitted, as such the Tribunal could not have attributed negligence to the driver of the offending vehicle.

11. It need not be emphasised that standard of proof of negligence in a criminal case is different from that in civil proceedings. Thus the test of standard of proof beyond reasonable doubt cannot be applied in petitions under Section 166 of the Motor Vehicle Act. De hors the acquittal in a criminal case, the Tribunal is required to make an independent inquiry and record a finding on the issue of negligence on the touchstone of preponderance of probability. Hence, the acquittal of the driver of the offending vehicle by the Criminal Court cannot be a ground for dismissing the petition.

12. As regards computation of compensation, the Claimant No.1 in her evidence has stated that the deceased was earning Rs.33,000/- per month. PW-2 Ramesh Kobal, who was working in the office of Superintendent, Technical Engineer, Pune, has produced salary certificate of the deceased. Perusal of the said certificate indicates that the deceased was receiving gross salary of Rs.32,718/- which included Basic of Rs.9840/-, Grade Pay of Rs.2,000/-, D.A. of

Rs.11,840/-. After deducting statutory deductions of Rs.3,021/- the net salary comes to Rs.29,697/-. Income of the deceased per annum works out to Rs.3,56,364/-. Upon deducting 1/ 3rd amount towards personal expenses of the deceased, the annual income works out to Rs.2,37,576/-. The deceased was 55 years of old. Hence, by applying the multiplier of 11, loss of dependency comes to Rs.26,13,336/-.

13. It is to be noted that in terms of judgment in ***Pranay Sethi Special Leave Petition Civil No.25590 of 2014*** Claimants would be entitled to compensation of Rs.15,000/- towards loss of estate, Rs. 40,000/- for loss of consortium and Rs.15,000/- for funeral expenses. The Tribunal has awarded Rs.1,00,000/- towards loss of consortium and Rs.1,00,000/- towards loss of care and guidance. The total amount awarded under these conventional head is Rs.2,00,000/- After deducting the excess amount of Rs.1,30,000/- the compensation works out to Rs.26,83,336/-. The award needs to be modified to that extent. Hence, the following order:-

(i) The Appeal is partly allowed.

(ii) The compensation is reduced to Rs.26,83,336/-. All other directions as regards interest, cost, etc. remain the same.

Excess amount of Rs.1,55,000/- be refunded to the Appellant-Insurance Company with the proportionate interest accrued thereon.

(iii) The statutory deposit be transferred to the Claims Tribunal, Pune.

(iv) In view of disposal of the Appeal, the Civil Application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

Megha Parab

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