IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO. 1208 OF 2019

The New India Assurance Company Ltd.
vs.
Ku. Pranuti d/o Villas Potraje and others

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Office Notes, Office Memorandum of Coram, Court's or Judge's orders
appearances, Court's orders of directions
and Registrar's orders

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Shri. A . A. Paunikar, counsel for appellant Ins.co.
Shri. S. O. Ahmed, counsel for respondents No.1 to 4.
Shri. V. U. Waghmare, counsel for respondent No.5.

CORAM : MANISH PITALE J

DATED : 16.10.2019

By this appeal, the appellant insurance company has challenged judgment and order dated 17.01.2018 passed by the Motor Accident Claims Tribunal, Chandrapur, whereby the claim application filed by the respondents Nos.1 to 4 has been partly allowed and quantum of compensation as determined by the said order was directed to be paid to the aforesaid respondents.

2. The main grievance raised on behalf of the appellant insurance company with regard to the quantum of compensation was that multiplier of 17 was erroneously applied by the Tribunal and further that deduction of 1/5th made by the Tribunal was

erroneous and that the deduction ought to have been 1/3rd.

3. There is no dispute about the fact that after the impugned judgment and order was passed, a review application was filed by the appellant insurance company and by order dated 23.03.2018, the Tribunal itself allowed the review application and made appropriate corrections in the impugned judgment and order dated 17.01.2018. By granting review application, the Tribunal made correction in paragraph 19 of the impugned judgment and order, wherein the basis of quantum was given and accordingly made corrections in the operative portion of the order. The Tribunal corrected the applicable multiplier from 17 to 16 and further held that deduction of 1/4th ought to have been made rather than 1/5th towards personal and living expenses of the deceased.

4. In this backdrop, the only submission made on behalf of the appellant insurance company was that deduction towards personal expenses of the deceased ought to have been 1/3rd and not 1/4th because, according the appellant insurance company, the parents of the deceased i.e. respondents No.3 & 4 could not be said to be dependent on her.

5. The learned counsel for the respondents invited attention of this Court to paragraph 22 of the

impugned judgment and order, wherein it was observed by the Tribunal that the respondents No.3 & 4 were the unfortunate parents who had loss their daughter in the accident on whose income they were dependent.

6. The said finding of the Tribunal appears to be based on specific pleadings made in the claim application, wherein it was specifically stated that deceased was residing with respondents No.3 & 4 at Rajura and in paragraph 12 of the application it was specifically stated that the respondents No.3 & 4 being old aged parents were dependent on the deceased. If the appellant insurance company seriously disputed the said claim made on behalf of the respondents, the appellant was expected to lead evidence in that regard. Admittedly, there is no such evidence led on behalf of the appellant insurance company. Therefore, it could not be said that any error was committed by the Tribunal, while deducting 1/4th towards personal expenses after having reviewed its own judgment and order.

7. Therefore, the grievance raised in the present appeal is not justified and no fault can be found with the manner in which the Tribunal calculated the quantum of compensation payable to the respondents No.1 to 4, after reviewing its own judgment and order.

8. It is also found by the learned counsel for the rival parties that calculation of the quantum of compensation payable to the respondents No.1 to 4, as made by the Tribunal after reviewing its own judgment and order, is correct and that therefore, an amount of Rs.65,21,688/- is payable to the said respondent along with interest @7.5%p.a. from 05.01.2016 till its full realization.

9. The appellant insurance company had deposited the amount in this Court on the basis of order passed by the Tribunal dated 17.01.2018 before it was reviewed. Since the Tribunal itself reduced the compensation marginally by allowing the review application filed by the appellant insurance company and review order is upheld by this Court, in this order by dismissing this appeal, the respondents No.1 to 4 are permitted to withdraw the amount that they are found to be entitled by the Tribunal upon review of its own order, along with accrued interest and the balance amount along with accrued interest shall be disbursed to the appellant insurance company.

10. Appeal is disposed of. No order as to costs.

JUDGE

KOLHE