**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

***CIVIL APPELLATE JURISDICTION***

**FIRST APPEAL (ST) NO. 10654 OF 2017**
**(REJECTED CASE NO. 186 OF 2018)**
**ALONGWITH**
**CIVIL APPLICATION NO. 690 OF 2018**
**ALONGWITH**
**CIVIL APPLICATION NO. 2138 OF 2017**

**United India Insurance Company Ltd. ….. Appellant**
**VERSUS**
**Smt.Deepa Dattatraya Davare & Ors. ….. Respondents**

Mr.Ketan Joshi for the Applicant/Appellant.
Mr.Ramdas A. Shelke for the Respondent nos. 1 to 3.

**CORAM : R.D. DHANUKA, J.**

**DATE : 3rd MARCH, 2020**

**P.C**.

By this appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original respondent no.4) has impugned the judgment and award dated 15th June, 2016 passed by the M.A.C.T. Sangli, allowing the claim application bearing no. M.A.C.P. No. 223 of 2007 filed by the respondent nos. 1 to 4 partly and directing the appellant and the other two respondents to pay the compensation of Rs.14,53,800/- inclusive of NFL amount with interest at the rate of 8% per annum from the date of petition till realization of full amount and proportionate costs.

2. By consent of the appellant and the respondent nos. 1 to 4, First Appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this Appeal are as under :-

3. It is the case of the respondent nos. 1 to 4 that Mr.Dattatraya

Dnyanu Davare was serving as an assistance police inspector. On 13th June, 2006, when the said Mr.Dattatraya Dnyanu Davare was travelling on motor cycle bearing registration no. MH-03-G-1000 on Mulund-Goregaon Link Road, respondent no.1 who was driving tempo bearing registration no. MH-15-AG-1377 in a rash and negligent manner dashed against the said motor cycle drawn by the said Mr.Dattatraya Dnyanu Davare. As a result of the said accident, the said Mr.Dattatraya Dnyanu Davare sustained head injury and died at the spot (hereinafter referred to as the said deceased). The respondent no.1 is the widow of the said deceased. The respondent nos. 2 and 3 are his children. The respondent no.4 is the mother of the said deceased.

4. The respondent nos. 1 to 4 filed claim application for claiming compensation in the sum of Rs.20,37,480/- against the original respondent nos. 1 to 4 including appellant herein jointly and severally. The claim was resisted by the respondent nos. 1 to 4 including the appellant. The Trial Court framed two issues. The respondent no.1 examined herself and on behalf of the respondent nos. 2. The appellant examined one clerk Mr.Gorakhnath Vishnu Chavan as one of the witness. The respondent nos. 3 and 4 also examined one witness each.

5. The Tribunal made a judgment and award dated 15th June, 2016 allowing the claim made by the respondent nos. 1 to 4 partly. Being aggrieved by the said judgment and award, the appellant has preferred this appeal. Rest of the respondents who were jointly and severally liable have not filed any appeal.

6. Mr.Joshi, learned counsel for the appellant invited my attention to the grounds nos. (g) to (k) of the appeal memo and invited my attention also to various findings rendered by the Tribunal. Learned

counsel also tendered a compilation of some of the documents forming part of the record before the Tribunal. It is submitted by the learned counsel that the vehicle involved in the accident was never insured with the appellant on the date of the accident on 13th June, 2006 at 11.55 a.m. The policy was issued only on 13th June, 2006 by the appellant. The cover note produced by the respondent nos. 1 to 4 was a fake document. The agent of the appellant who had issued such cover note was not the authorized agent of the appellant. The claim form filed by the respondent nos. 1 to 4 was also fake. At the time of accident, the offending vehicle was never insured with the appellant. Learned counsel for the appellant submits that the Trial Court thus could not pass any order of compensation against the appellant.

7. Learned counsel for the respondent nos. 1 to 4 on the other hand strongly placed reliance on the findings rendered by the Tribunal against the appellant and invited my attention to the affidavit in lieu examination in chief of the witness examined by the appellant Mr.Shankarram Ramlal Jaiswar and more particularly at paragraph (3) and would submit that the witness of the appellant himself in the said para had deposed that the appellant had taken action against Mr.B.S.N.Rawat by de-activating his agency. It is submitted that it is an admitted position that the said Mr.B.S.N.Rawat was an agent of the appellant. Learned counsel also invited my attention to the cover note of the insurance policy and would submit that the period of insurance was from 14th June, 2006 to mid night of 13th June, 2007. The said cover note also indicates the name of Mr.B.S.N.Rawat as an agent of the appellant. The accident had taken place on 13th June, 2006 at 11.55 a.m. It is submitted by the learned counsel that none of these issues which are now raised before this court were raised before the Tribunal.

8. A perusal of the compilation tendered across the bar comprising of various documents including the affidavit in lieu of examination in chief filed by Mr.Shankarram Ramlal Jaiswar clearly indicates that it was the case of the appellant itself that the said Mr.B.S.N.Rawat was an agent of the appellant. The appellant had also taken action by de-activating in his agency. There is thus no substance in the submission of the learned counsel for the appellant that said Mr.B.S.N.Rawat was not agent of the appellant. The submission is contrary to the evidence on record.

9. A perusal of the documents forming part of the compilation further indicates that the policy cover note was in respect of the vehicle no. MH-15-AG-1377. It was the offending vehicle and was insured by the appellant through the agent Mr.B.S.N.Rawat. The said document was tendered by the appellant itself before the Tribunal. There is thus no substance in the submission of the learned counsel for the appellant that when the accident had taken place, the offending vehicle was not insured by the appellant. The said cover note also indicates the name of the said agent Mr.B.S.N.Rawat as an agent of the appellant. The argument made by the learned counsel is contrary to the evidence on record and the same is thus rejected.

10. I am not inclined to accept the submissions made by the learned counsel for the appellant that the cover note was a fake document and that the same was fabricated by the said agent of the appellant. Be that as it may, the appellant has already initiated action against the said agent. No other submission is made by the learned counsel for the appellant.

11. The Trial Court has rendered various findings of fact after considering the pleadings, documents and the evidence. The findings of fact rendered by the Trial Court being not perverse, cannot be interferred with by this court.

12. Learned counsel for the respondent nos. 1 to 4 invited my attention to the paragraphs 38 and 39 of the impugned judgment and award and would submit that though the said deceased was a permanent employee, the Tribunal has not considered 30% of the salary as future prospect. He submits that the Trial Court has awarded a sum of Rs.10,000/- for funeral expenses and Rs.20,000/- for loss of love and affection and ought to have granted Rs.75,000/- in toto in accordance with the principles of law laid down in the judgment of the Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi and others, (2017) 16 SCC 680***.

13. In rejoinder, Mr.Joshi, learned counsel for the appellant could not controvert any of the legal submissions made by the learned counsel for the respondent nos. 1 to 4 including the fact that though the respondent nos. 1 to 4 ought to have been rendered the compensation towards future prospect at the rate of 30% considering the age of the said deceased at 43 and that he was a permanent employee and the compensation for funeral expenses and loss of love and affection ought to be at Rs.70,000/- under three heads.

14. In my view, even though the respondent nos. 1 to 4 have not filed any cross objection or cross appeal for enhancement of the compensation i.e. 30% towards the future prospects, Rs.70,000/- under the heads of funeral expenses, consortium and loss of estate, respondent nos. 1 to 4 have to be awarded just, fair and reasonable

compensation by this court while considering the appeal of the insurance company. I, therefore, pass the following order :-

15. The respondent nos. 1 to 4 will be allowed to recover a sum of Rs. 19,20,949/- from the appellant inclusive of NFL amount with interest at the rate of 8% per annum from the date of petition till realization of full amount and proportionate costs.

16. If the respondent nos. 2 and 3 are still minor, the share found payable by the Tribunal in their favour shall be invested in the fixed deposit of the nationalized bank till they attain the age of majority. Upon attaining the age of majority, the respondent nos. 2 and 3, would be entitled to withdraw the said amount. Till they attain the majority, the respondent no.1 would be entitled to withdraw interest upon such fixed deposit for the purpose of maintenance of respondent nos. 2 and 3. It is made clear that if the respondent no.2 has already become major, the respondent no.2 also would be entitled to withdraw the amount of compensation as permitted by the Tribunal. The respondent nos. 1 to 4 are permitted to withdraw the amount held in their favour under the said judgment and award out of the amount deposited by the appellant. If there is any shortfall in the amount deposited by the appellant, the said shortfall amount shall be deposited by the appellant within two weeks from the date of such computation by the tribunal. If there is any surplus amount, after payment to the respondent nos. 1 to 4, the same shall be returned to the appellant. The impugned judgment and award dated 15th June, 2016 is substituted by this order.

17. The parties as well as the M.A.C.T. to act on the authenticated copy of this order. In view of the disposal of the First Appeal, interim application for withdrawal of the amount bearing no. 690 of 2018 and

stay application no. 2138 of 2017 do not survive and are accordingly disposed of. No order as to costs.

**[R.D.DHANUKA, J.]**