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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1 OF 2019
IN
REJECTED CASE NO.1473 OF 2019

Reliance General Insurance Co. Ltd. ...Applicant
V/s.
Shabbir S. Malik & Ors. ...Respondents

WITH
CIVIL APPLICATION NO.3410 OF 2019
IN
FIRST APPEAL (STAMP) NO.2165 OF 2019

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Reliance General Insurance Co. Ltd. ...Applicant
V/s.
Shabbir S. Malik & Ors. ...Respondents

Mr.Rahul Mehta i/b M/s.KMC Legal Venture for the Applicant /
Appellant.

Mr.Niketan Nakhawa for the Respondent Nos.1 and 2 / Applicant in
Civil Application No.3410 of 2019.

CORAM : R.D. DHANUKA, J.
DATE : 11TH FEBRUARY, 2020.

P.C. :-

1. The papers are allowed to be produced at 3.00 p.m.
2. By this appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original insurer) has impugned the

judgment and award dated 10th January, 2018 passed by Motor Accident Claims Tribunal, Mumbai in M.A.C.P. No.1773 of 2013 allowing part of the claims made by the respondent nos.1 and 2 (original applicants). By consent of the appellant and the respondent nos.1 and 2, the appeal is heard finally at the admission stage.

3. The respondent no.1 is the father and the respondent no.2 is the mother of Moiz (hereinafter referred as “the said deceased”). The said deceased was four years and was got down from the school bus bearing registration No.MH 04 G-5018 on 20th September, 2013 at about 6.30 p.m. at Goregaon (East), Mumbai. The driver of the offending vehicle was driving the vehicle in rash and negligent manner and dashed the said deceased who succumbed to the injuries subsequently. The respondent nos.1 and 2 being the parents of the said deceased filed the application for compensation. The appellant opposes the claim filed by the respondent nos.1 to 2 by filing the written statement. The respondent nos.1 and 2 examined the respondent no.1 as witness and was subjected to the cross-examination. The appellant did not lead any evidence.

4. It is not in dispute that the appellant had also filed an application under section 170 of the Motor Vehicles Act, 1888 however, did not examine any witness.

5. The Tribunal framed three issues for adjudication and has after considering the documentary and oral evidence led by the

respondent nos.1 and 2 has rendered a finding that the respondents have proved that the said deceased died in an accident occurred due to rash and negligent driving by the school bus bearing registration No.MH 04 G-5018.

6. Mr.Mehta, learned counsel appearing for the appellant submits that the Tribunal could not have awarded any compensation in favour of the respondent nos.1 and 2.Learned counsel however does not dispute that the appellant did not lead any evidence to prove the the burden of proof cast upon his client.

7. No other submissions however, were made before this Court. I do not find any infirmity in the judgment and award rendered rendered by the Tribunal on 10th January, 2018.The appeal is devoid of merit and is accordingly dismissed.

8. In view of dismissal of the First Appeal, pending civil applications, if any, do not survive and are accordingly disposed of.

9. In view of dismissal of the First Appeal, the respondent nos.1 and 2 would be at liberty to withdraw the decretal amount out of the amount already deposited by the appellant before the M.A.C.T. on production of the authenticated copy of this order. If there is any short fall in depositing the decretal amount, the appellant shall deposit the balance amount within two weeks from the date of such computation by the M.A.C.T. If there is any surplus amount left after

payment of the decretal amount, the Tribunal shall refund the said amount to the appellant.

10. The office is directed to transmit the amount of Rs.25,000/- deposited by the appellant as and by way of statutory deposit to the concerned M.A.C.T. expeditiously.

11. All parties as well as the Tribunal to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)