

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****FIRST APPEAL (ST) NO. 26961 OF 2017****Branch Manager,****Reliance General Insurance Co. Ltd.****..... Appellant****VERSUS****Smt.Anjana Narayan Kamble & Ors.****..... Respondents****ALONGWITH****CIVIL APPLICATION NO. 2874 OF 2019****IN****FIRST APPEAL (ST) NO. 26961 OF 2017****Smt.Anjana Narayan Kamble & Ors.****..... Applicants****IN THE MATTER BETWEEN****Branch Manager,****Reliance General Insurance Co. Ltd.****..... Appellant****VERSUS****Smt.Anjana Narayan Kamble & Ors.****..... Respondents**

Ms.Shalini Shankar for the Applicant in Civil Applicant and for the Appellant in the First Appeal.

Mr.Sujay H. Gangal, a/w. Mr.R.G.Shinde for the Respondent nos. 1 to 3 in the First Appeal and for the Applicant in the CAF/2874/2019.

CORAM : R.D. DHANUKA, J.**DATE : 8th JANUARY, 2020****P.C.**

Learned counsel for the appellant states that the respondent no.4 is also served. None appeared for the respondent no.4 when the matter was called out. Learned counsel for the respondent nos. 1 to 3 waives service.

2. By consent of appellant and the respondent nos. 1 to 3 appeal is

heard finally.

3. By this appeal, the appeal has impugned the judgment and award dated 30th November, 2016 passed by the M.A.C.T., Pune allowing claim of Rs.51,65,500/- to the respondent nos. 1 to 3 inclusive of 'No Fault Liability' amount with interest at the rate of 9% p.a. from the date of the claim, till realization jointly and severally with respondent no.4.

4. The respondent no.4 has not impugned the said judgment and award passed by the tribunal.

5. Learned counsel for the appellant and the respondent nos. 1 to 3 have tendered calculation. It is an admitted position that the deceased Mr. Narayan Kamble who was riding motorcycle met with an accident. The Tribunal has rendered a finding that the offending vehicle bearing registration no. MH-42/V-5013 was driven rashly and negligently.

6. The appellant has impugned the judgment and award rendered by the Tribunal merely on the ground that the said deceased was not wearing helmet at the time of accident and was driving the said motorcycle with two others i.e. triple seat contrary to the provisions of the Motor Vehicles Act.

7. It is the case of the appellant that though it was an admitted position that the said deceased was not wearing helmet and was driving the said motorcycle triple seat, the Tribunal has not held the said deceased liable for contributory negligence.

8. Learned counsel for the appellant states that atleast to the extent

of 1/3rd, the deceased ought to have held as negligent jointly with the driver of the offending vehicle and thus the compensation awarded by the Tribunal should to the extent of 1/3rd be reduced. Learned counsel for the appellant and the respondent nos. 1 to 3 tendered calculation before this court after reducing the compensation by 30% and prays that the said amount may be awarded to the respondent nos. 1 to 3.

9. At this stage learned counsel for the appellant prays that the appellant be granted liberty to first pay the amount mentioned in the joint statement and thereafter recover the same from the respondent no.4. Learned counsel however did not dispute that no evidence was led by the appellant before the Tribunal to prove that the driver of the offending vehicle committed violation of the policy issued by the appellant. This court thus cannot accede to this request made by the learned counsel for the appellant. I, therefore, pass the following order :-

(a) The impugned judgment and award dated 30th November, 2016 passed by the M.A.C.T., Baramati, Dist. Pune is modified as under :-

(b) The respondent nos. 1 to 3 would be entitled to get compensation amount of Rs.60,29,483.36 which is inclusive of interest at the rate of 9% p.a. till date. The respondent nos. 1 to 3 would be entitled to recover the said amount out of the amount deposited by the appellant before the M.A.C.T. on production of authenticated copy of this order.

(c) It is made clear that, if there is any shortfall in recovering the amount quantified by this order based on the calculation submitted by the parties, the appellant shall deposit the said shortfall 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 decreed amount deposited by the appellant, Tribunal to refund the said amount on production of authenticated copy of this order.

10. First appeal is disposed of on the aforesaid terms. No order as to costs.

11. The parties as well as the M.A.C.T., Baramati, Dist. Pune to act on the authenticated copy of this order.

12. Office is directed to transmit the statutory deposit made by the appellant to the M.A.C.T., Baramati, Dist. Pune expeditiously.

13. In view of the disposal of the first appeal, Civil Application No. 2874 of 2019 does not survive and is accordingly disposed of.

[R.D.DHANUKA, J.]