IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 394 OF 2018

M/s.New India Assurance Company Ltd. ….. Appellant

VERSUS

Mrs.Sonali @ Sidhi Ganesh Rao & Ors. ….. Applicants

ALONGWITH
CIVIL APPLICATION NO. 3847 OF 2019
IN
FIRST APPEAL NO. 394 OF 2018

Mrs.Sonali @ Sidhi Ganesh Rao & Anr. ….. Applicants

IN THE MATTER BEWTEEN

M/s.New India Assurance Company Ltd. ….. Appellant

VERSUS

Mrs.Sonali @ Sidhi Ganesh Rao & Ors. ….. Applicants

Mr.H.B.Takke for the Applicants.

Mr.S.R.Gupta for the Respondent/Applicant in CAF/3847/2019.

CORAM : R.D. DHANUKA, J.

DATE : 26th FEBRUARY, 2020

P.C.

First Appeal not on board. Taken on board.

2. By this First Appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original insurer) has impugned the judgment and award dated 4th January,2017 passed by the M.A.C.T.,

Mumbai directing the appellant to pay a sum of Rs.15,14,000/- with interest at the rate of 9% per annum from the date of application till realization. By consent of the appellant and the original claimant, the First Appeal is heard finally.

3. By the impugned judgment and award, the Tribunal has awarded a sum of Rs.15,14,000/- with interest at the rate of 9% per annum from the date of application till realization.

4. Learned counsel for the original claimant tenders a calculation which according to him would be atleast payable by the appellant i.e. Rs.14,24,400/-. The said calculation is taken on record and marked 'X' for identification.

5. Learned counsel for the appellant states that he has verified the calculations submitted by the original claimant which are in accordance with the evidence led by the original claimant and in accordance with the principles of law laid down by the Hon'ble Supreme Court in case of ***National Insurance Company Limited vs. Pranay Sethi & Ors., (2017) 16 SCC 680***. Statement is accepted.

6. I, therefore pass the following order :-

(a) The original claimants (respondent nos. 1 and 2) would be entitled to recover a sum of Rs.14,24,400/- from the appellant inclusive of NFL amount with interest at the rate of 9% from the date of application till realization.

(b) The apportionment of the amount shall be in accordance with the directions issued by the M.A.C.T. in paragraphs 3 and 4.

(c) Upon the age of majority, the respondent no.2 would be entitled to withdraw the amount that would be deposited in the fixed deposit.

(d) Till such time, the respondent no.1 would be at liberty to withdraw interest on such amount for the purpose of maintaining the respondent no.2.

(e) If there is any shortfall in the amount of deposit, the same shall be deposited by the appellant within two weeks from the date of computation of such shortfall by the M.A.C.T.

(f) If there is any surplus amount deposited by the appellant, the same would be refunded to the appellant after payment of the amount to the respondent nos. 1 and 2 in the aforesaid manner.

(g) Office is directed to transmit Rs.25,000/- deposited by the appellant as and by way of statutory deposit to the concerned M.A.C.T. expeditiously.

(h) The judgment and award dated 4th January,2017 is substituted by this order.

7. First Appeal is disposed of on the aforesaid terms. No order as to costs.

8. The parties as well as the M.A.C.T. to act on the authenticated copy of this order.

9. In view of the disposal of the First Appeal, civil application does not survive and is accordingly disposed of.

[R.D.DHANUKA, J.]