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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 200 OF 2015
WITH
CIVIL APPLICATION NO. 3431 OF 2014
IN
FIRST APPEAL NO. 1812 OF 2009**

The New India Assurance Co. Ltd. ... Appellant/Applicant
V/s.
Smt. Pooja Mishra and Ors. ... Respondents

.....
Ms. Poonam R. Mital for the Appellant/Applicant.

Mr. T. J. Mendon for the Respondent Nos. 1 to 4.
.....

CORAM : R.D. DHANUKA, J.

DATE : 14th FEBRUARY, 2020.

P.C.:

. 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 28th March, 2014 passed by the Motor Accident Claim Tribunal, Mumbai (for short 'M.A.C.T., Mumbai') in Claim Application No. 1838 of 2011 allowing the said claim application filed by the respondent nos. 1 to 4 partly and directing the appellant to pay Rs.26,00,000/- inclusive of 'no fault liability' of Rs.50,000/- with interest @ 7.5% p.a. from the date of filing petition till actual realization.

2. Learned counsel appearing for the parties have tendered a statement regarding calculations of the amount due and payable to the respondent

nos. 1 to 4 considering various judgments of Supreme Court and this Court. Statement is taken on record and marked 'X' for identification.

3. Learned counsel appearing for the parties state that this Court shall pass an order in accordance with the said calculation submitted by the parties and shall substitute the judgment and order rendered by the M.A.C.T., Mumbai by awarding the amount mentioned therein.

4. There is no dispute that the appeal is filed only challenging the quantification awarded by the M.A.C.T., Mumbai. Since, both the parties have agreed that the respondent nos. 1 to 4 can be awarded a sum of Rs.39,84,000/- according to the said calculation arrived at between the parties, I am inclined to modify the judgment and award rendered by the M.A.C.T., Mumbai accordingly.

5. Both the parties have already agreed that this court shall not record any reasons while disposing off the First Appeal.

6. I therefore pass the following order :-

- (a) The respondent nos. 1 to 4 would be entitled to recover the sum of Rs.39,84,000/- from the appellant under the said judgment and award dated 28th March, 2014 inclusive of 'no fault liability' of Rs.50,000/- with interest @ 7.5% p.a. from the date of filing petition till actual realization modified by this order.
- (b) The respondent nos. 1 to 4 shall give credit of Rs.5,00,000/-

already withdrawn pursuant to the interim order passed by this Court, out of the said decretal amount with interest @ 7.5% p.a.

- (c) If there is any shortfall in the deposit of decretal amount by the appellant, the amount of shortfall shall be deposited by the appellant with the M.A.C.T., Mumbai within two weeks from the date of such computation of the shortfall by the Tribunal.
- (d) If there is any surplus amount deposited by the appellant, the M.A.C.T., Mumbai to refund the said surplus amount to the appellant.
- (e) The judgment and award dated 28th March, 2014 passed by the M.A.C.T., Mumbai is substituted by this order.
- (f) Parties as well as the M.A.C.T., Mumbai to act on the authenticated copy of this order.
- (g) Office is directed to transmit statutory deposit amount of Rs.25,000/- to the M.A.C.T., Mumbai, expeditiously.
- (h) First Appeal is disposed off on aforesaid terms. In view of the disposal of the First Appeal, Civil Application No.3431 of 2014 does not survive and is accordingly disposed off. No order as to costs.

(R.D. DHANUKA, J.)