

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

**FIRST APPEAL NO.1368 OF 2017
IN
CIVIL APPLICATION NO.4128 OF 2017**

Reliance General Insurance Co. Ltd. .. Appellant/Applicant
Vs.
Dungarshi Khimji Alias Bhanushali & Ors. .. Respondents

Mr.Rahul Mehta i/by M/s.KMC Venture for the appellant/applicant.
Mr.S.V. Chaugule for the respondent nos.1 to 3.

CORAM : R.D.DHANUKA, J.
DATE : 6th January 2020

P.C.:

. Papers are allowed to be produced at 3.00 p.m.

2. By this first appeal filed under Section 166 of the Motor Vehicles Act, 1988, the appellant (original insurer), one of the parties to the proceedings before the MACT, Mumbai has impugned the judgment and award dated 10th April 2017 directing the appellant and the respondent no.4 herein to pay jointly and severally a sum of Rs.23,85,000/- inclusive of the NFL, to the respondent nos.1 to 3 along with interest @ 7.5% p.a. from the date of application till realisation and also amount of Rs.2,00,000/- to the respondent no.3 being major unmarried sister of the deceased.

3. By a separate order passed by this Court, notice of the respondent no.4 is already dispensed with. By consent of the appellant and the respondent no.3, the appeal is heard finally. Some of the relevant facts for the purpose of deciding this appeal are as under :-

4. It was the case of the respondent nos.1 to 3 that on 12th May 2011 at about 00-10 hrs., the deceased was traveling in offending Motor Car bearing No.Mh-43-N-991 along with other friends. The said car was driven by Mr.Deepak Purushottam Bhanushali in a rash and negligent manner as well as in high speed. It was the case of the respondent nos.1 to 3 that when the said car reached near Regency Society, towards opposite side on Palm Beach Road at 00-10 hrs., offending car in which the deceased was travelling gave violent and serious dash to motorcycle bearing No.MH-15-CZ-8439. The said motor car thus turned turtle. In that accident, the said deceased sustained grievous injuries and died. The said offending vehicle at the relevant time was insured with the appellant. The respondent nos.1 to 3 filed an application for compensation before the MACT, Mumbai bearing Application No.1685 of 2011. The said application was resisted by the appellant by filing written statement.

5. It was contended in the written statement that the application was bad for non-joinder of necessary party. The driver of the offending

vehicle was not holding valid and effective driving license at the time of the accident. It was also contended that the driver of the Motorcycle was solely negligent in causing the accident and guilty of contributory negligence. The Tribunal framed four issues for determination.

6. The applicant no.1 testified himself and also examined the witnesses viz. Himmatlal Mangaldas Bhanushali and Chetan Karsandas Bhanushali and also tendered various documents before the Tribunal including FIR, Complaint, Spot Panchnama, Inquest Panchnama, Provision Cause of Death Certificate. The said witness examined by the respondent nos.1 to 3 were cross-examined by the appellant. The appellant did not enter the witness box. The Tribunal has rendered the judgment and award dated 10th April 2017 directing the appellant and the respondent no.4 herein to pay jointly and severally a sum of Rs.23,85,000/- inclusive of the NFL, to the respondent nos.1 to 3 along with interest @ 7.5% p.a. from the date of application till realisation and also amount of Rs.2,00,000/- to the respondent no.3 being major unmarried sister of the deceased. The balance amount along with accrued interest was directed to be paid to the respondent nos.1 & 2 being father and mother of the deceased in equal shares. The respondent no.4 did not impugn the said judgment and award. The appellant impugned the said judgment and award by filing this first appeal.

7. Mr.Mehta, learned counsel for the appellant invited my attention to various findings rendered by the Tribunal and would submit that the Tribunal having allowed various compensation under various heads including the compensation for future prospect could not have awarded an amount of Rs.1,00,000/- as compensation towards future loss of income in paragraph 19 of the impugned judgment and award.

8. In so far as other compensation awarded by the Tribunal towards future prospect @50% amount of salary of Rs.10,000/- per month and deduction towards personal and living expenses at 1/3rd, amount of multiplier of 18 is concerned, learned counsel could not demonstrate as to how the judgment and award rendered by the Tribunal is vitiated. Similarly, learned counsel could not point out that as to how the amounts of Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses were wrongly awarded by the Tribunal.

9. Learned counsel for the respondent nos.1 to 3 submits that he has no objection if the amount of Rs.1,00,000/- awarded by the Tribunal as compensation towards future loss of income is set aside. Statement is accepted.

10. It is submitted by the learned counsel for the respondent

nos.1 to 3 that the amount excluding Rs.1,00,000/- awarded by the Tribunal in the impugned judgment, the balance amount is awarded after considering the oral and documentary evidence produced by the witnesses examined by the respondent nos.1 to 3 and after applying the principles of law laid down by the Supreme Court in the cases of ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, Santosh Devi Vs. National Insurance Co. Ltd. & Ors., ACJ 2012 SC Page 1428, Rajesh Vs. Rajbeer, ACJ 2013 SC Page 1403 and Asha Verman & Ors. Vs. Maharaj Singh & Ors., ACJ 2015 SC Page 1286.*** He submits that the Tribunal has rightly applied the principles of law laid down by the Supreme Court in those judgments and has rightly allowed the other compensation excluding the said amount of Rs.1,00,000/-. Mr.Mehta, learned counsel for the appellant in rejoinder could not point out any error in the submission made by the respondent nos.1 to 3.

11. A perusal of the judgment and award rendered by the Tribunal clearly indicates that the Tribunal has rightly considered Rs.10,000/- per month as monthly income of the said deceased after considering the documentary evidence produced by the learned counsel for the respondent nos.1 to 3 to ascertain loss of dependency and has rightly added 50% of the said amount towards future prospect.

12. Considering the judgment of the Supreme Court in the case of ***Sarla Verma & Ors. (supra)***, the Tribunal has rightly deducted 1/3rd

amount towards personal and living expenses. The Tribunal has rightly considered multiplier of 18 after following the judgment of the Supreme Court in the case of **Sarla Verma & Ors. (supra)** considering the age of the deceased.

13. In my view, the Tribunal has rightly allowed the amounts of Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Mr.Mehta, learned counsel for the appellant could not dispute these heads of compensation allowed by the Tribunal in the said judgment and award.

14. Learned counsel for the appellant states that the Appellant has already deposited the decretal amount with MACT, Mumbai.

15. I therefore pass the following order :-

- (i) The appellant is liable to pay the respondent nos.1 to 3 a sum of Rs.22,85,000/- inclusive of the NFL along with interest @7.5% p.a. from the date of application till realisation.
- (ii) Out of the said amount, the amount of Rs.2,00,000/- shall be paid to the respondent no.3 being major unmarried sister of the deceased.
- (iii) The balance amount along with accrued interest would be paid to the respondent nos.1 & 2 being father and mother of the deceased in equal shares.

- (iv) The respondent nos.1 to 3 would be entitled to withdraw the amount awarded by the Tribunal modified by this order.
- (v) Out of the said deposit by the appellant with MACT, if there is any shortfall in recovering the amount by the respondent nos.1 to 3, the appellant shall deposit the balance amount with the Tribunal within two weeks from the date of computation of shortfall by the Tribunal. If the Tribunal finds any additional amount deposited by the appellant, the Tribunal shall refund the said additional amount within four weeks from the date of such computation to the appellant.
- (vii) The judgment and award dated 10th April 2017 is modified to the aforesaid extent.
- (viii) Office is directed to transmit the statutory deposit of Rs.25,000/- to the MACT, Mumbai expeditiously.

16. First appeal is disposed of in aforesaid terms. In view of disposal of the appeal, civil application does not survive and is disposed of. Parties as well as the MACT, Mumbai to act on the authenticated copy of this order.

R.D.DHANUKA, J.