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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.29813 OF 2017
WITH
CIVIL APPLICATION NO.1041 OF 2018
AND
INTERIM APPLICATION NO.1 OF 2020

Reliance General Insurance Co. Ltd. ...Appellant
V/s.
Kavita R. Dudhe & Ors. ...Respondents

Mr.Rahul Mehta i/b M/s.KMC Legal Venture for the Appellant & for the Applicant in Civil Application No.1041 of 2018.

Mr.Laxman S. Deshmukh for the Respondent Nos.1 to 5 and for the Applicant in Interim Application No.1 of 2020.

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

P.C. :-

1. By this First Appeal filed under section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 4th May, 2017 passed by the M.A.C.T., Alibag in MACP No.274 of 2012 allowing part of the claims made by the respondent nos.1 to 4. The appeal is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this First Appeal are as under :

2. The respondent nos.1 to 4 are the legal heirs of Ramesh Mahadeo Dudhe. It was the case of the respondent nos.1 to 4 that on 10th July, 2012 the said Ramesh Mahadeo Dubhe (hereinafter referred to as "the said deceased") was the pillion rider of the motor

vehicle bearing registration no.42 F – 2254. The said motorcycle was driven by Ramesh Bhanudas Khude, a police constable. The said motorcycle met with an accident with the truck bearing registration no.HR – 55 – J 4231. The driver of the said offending vehicle was driving the said vehicle in rash and negligent manner. The said deceased died on the spot. The respondent nos.1 to 4 filed a claim for compensation before the Tribunal against the appellant as well as the other opponents. The appellant filed a written statement in the said claim application filed by the respondent nos.1 to 4 and denied the claims made by the respondent nos.1 to 4. The respondent nos.1 to 4 examined two witnesses including the witness from the office of the employer where the said deceased was working. The appellant did not examine any witnesses.

3. The Tribunal framed four issues for determination and held that the respondent nos.1 to 4 had proved that due to rash and negligent driving by the truck, the accident had taken place on 10th July, 2012 and as a result of such accident, the said deceased had expired on the spot. It is not in dispute that the offending vehicle was insured with the appellant.

4. Mr.Mehta, learned counsel appearing for the appellant invited my attention to the findings rendered by the Tribunal in the impugned judgment and award and would submit that the Tribunal has considered the yearly income of the said deceased at Rs.360,064/- instead of Rs.2,49,168/-. He submits that the

compensation has been already computed by deriving the loss of dependency by the Tribunal in the sum of Rs.2,62,540/- instead of lower amount.

5. It is submitted by the learned counsel that the Tribunal could not have allowed the consortium amount in favour of the respondent no.1 who was widow of the deceased at Rs.1,00,000/- The said amount can be awarded only at Rs.40,000/-.

6. On the other hand, learned counsel appearing for the respondent nos.1 to 4 invited my attention to the evidence of the witness Sandip Khutale (PW 2), who was working as clerk in the office of Police Commissioner, Navi Mumbai. The witness produced form No.16 showing the gross salary of the said deceased. He also invited my attention to the cross-examination of the said witness by the learned counsel for the appellant. He submits that a suggestion was put to the said witness that the amount of Rs.120/- towards group insurance scheme and the amount of income tax were not deducted from the gross salary. The said witness admitted that no such deductions were made in the gross salary reflected in the certificate produced by him. It is submitted by the learned counsel that however, the Tribunal has deduced the said amount while computing the loss of dependency in the judgment and award.

7. Insofar as the submission of Mr.Mehta, learned counsel for the appellant that the Tribunal could not have awarded the

compensation towards consortium of more than Rs.40,000/- is concerned, learned counsel for the appellant concedes that the said amount could not have been awarded more than Rs.40,000/-. Statement is accepted.

8. Insofar as the submission of Mr.Mehta, learned counsel for the appellant that loss of dependency was not rightly computed by the Tribunal is concerned, a perusal of the cross-examination of the witness Sandip Khutale (PW 2) clearly indicates that the salary certificate produced by the said witness was disputed only in respect of deduction of premium towards the group insurance scheme in the sum of Rs.120/- and there being no deduction towards income tax in the said certificate while showing the gross salary of the said deceased.

9. A perusal of the impugned judgment and award clearly indicates that the Tribunal had deducted the professional tax of Rs.2,500/- and income tax of Rs.5,800/- while computing the loss of dependency. There is no merit in this submission of the learned counsel for the appellant.

10. Insofar as the amount of consortium awarded by the Tribunal is concerned, Mr.Mehta, learned counsel for the appellant is right in his submission that the Tribunal could not have awarded the consortium amount of R.1,00,000/- and could have awarded a sum of Rs.40,000/-. I am inclined to reduce the said amount of Rs.1,00,000/-

to Rs.40,000/-. It is ordered accordingly. Learned counsel for the appellant did not urge any other submission for consideration of this Court.

11. I therefore, pass the following order :-

a). The appellant is liable to pay a sum of Rs.30,77,940/- to the respondent nos.1 to 5 with interest at the rate of 7% from the date of filing of the claim application till realization.

b). The respondent nos.1 to 5 are allowed to withdraw the decretal amount out of the amount deposited by appellant before the Tribunal at Alibag.

c). If there is any short fall in the appellant 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. In that event, the respondent nos.1 to 5 would be at liberty to withdraw such shortfall amount also that would be deposited by the appellant. If there is any surplus amount deposited by the appellant, the Tribunal shall refund the said amount after paying the decretal amount to the respondent nos.1 to 5, to the appellant on production of an authenticated copy of this Court. The respondent nos.1 to 5 would be entitled to recover the amount awarded by the judgment and award dated 4th May, 2017 as modified by this order.

d). The First Appeal is disposed of in aforesaid terms.

e). The office is directed to transmit the amount of Rs.25,000/- deposited by the appellant as a statutory amount to the Tribunal, Alibag expeditiously.

f). In view of the disposal of the First Appeal, the Interim Application No.1 of 2020 does not survive and is accordingly disposed of.

g). If there are any pending civil applications and/or interim applications in this First Appeal, the same are accordingly disposed of. No order as to costs.

(R.D. DHANUKA, J.)