

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (STAMP) NO.29854 OF 2017
WITH
CIVIL APPLICATION NO.1168 OF 2018
WITH
CIVIL APPLICATION NO.3752 OF 2019

Reliance General Insurance Co. Ltd.

...Appellant /
...Applicant

V/s.

Chandrakant S. Patil & Ors.

...Respondents

Mr.Rahul Mehta i/b M/s.KMC Legal Venture for the Appellant and for the Applicant in Civil Application No.1168 of 2018.

Mr.T.J. Mendon for the Respondent Nos.1, 3 and 4 and for the Applicant in Civil Application No.3752 of 2019.

CORAM : R.D. DHANUKA, J.
DATE : 25TH FEBRUARY, 2020.

P.C. :-

1. Not on board. Taken on board. By consent of the parties, who are present in Court, the First Appeal is heard finally.

2. By this appeal filed under section 173 of the Motor Vehicles Act, 1988 (M.V. Act), the appellant (original opponent no.2) has impugned the judgment and award dated 20th February, 2017 allowing part of the claims made by the original applicants in MACP No.173 of 2010 and directing the appellant and other opponents to pay a sum of Rs.4,86,500/- including NFL amount under section 140

of the M.V. Act, 1988 with interest at the rate of 7% p.a. from the date of filing of the applicant till realization. By consent of the appellant and the contesting respondents i.e. respondent nos.1, 3 and 4, the appeal is heard finally at the admission stage.

3. On 9th February, 2010 at 2.30 p.m. Shekhar Chandrakant Patil who was driving Hero Honda motorcycle bearing registration No.MH-06 AJ 0390 was given dash by the driver of the offending vehicle bearing registration No.MH-10 Z - 7762 and as a result thereof, the said Shekhar Chandrakant Patil expired. The legal heirs of the said deceased filed an application for compensation before M.A.C.T, Raigad – Alibag. The claim was resisted by the appellant by filing a written statement on 24th January, 2011. The original applicants examined the witnesses and produced various documents. The appellant did not examine any witness. The Tribunal passed a judgment and award after framing three points for determination and after considering the oral and documentary evidence led by the original claimants. The Tribunal awarded a sum of Rs.4,86,500/- with interest from the date of filing an application till realization.

4. Mr.Mehta, learned counsel appearing for the appellant submits that the driver of the offending vehicle was not holding the license to drive the said vehicle and there was breach of the policy specified under the terms and conditions of the policy under section 149(2)(a)(ii) of the M.V. Act, 1988 and thus the appellant was not

liable to pay any compensation to the original applicants.

5. The next submission of the learned counsel is that the Tribunal should not have considered the compensation based on the income of Rs.4,000/- per month since admittedly no other proof of income in support of the claim at the rate of Rs.4,000/- per month was filed by the original claimants.

6. Insofar as the first submission made by the learned counsel for the appellant is concerned that though specific plea was raised in the written statement that there was breach of the terms and conditions of the policy and that the driver did not have valid license is considered, admittedly appellant did not lead any evidence before the Tribunal. In my view, no such plea thus can be raised by the appellant before this Court.

7. Insofar as the submission of the learned counsel that the Tribunal could not have considered the monthly income of Rs.4,000/- per month is concerned, the original applicants have led oral evidence. The said deceased was 22 years old at the time of his death. The said deceased was employed. The original applicants however, could not produce any salary certificate. In these circumstances, the Tribunal considered the income of Rs.4,000/- per month and has rightly considered 50% of the amount as future prospects. I do not find any infirmity with this part of the judgment and award also. In my view, the Tribunal has rightly considered just,

fair and reasonable monthly income of Rs.4,000/- considering the facts of this case.

8. No other points are urged by the learned counsel for the appellant. The original applicants have led oral as well as documentary evidence. No interference is warranted by this Court in this First Appeal. The First Appeal is devoid of merit and is accordingly dismissed. The original applicants are permitted to withdraw the entire decretal amount with interest deposited by the appellant before the Tribunal. If there is any short fall in recovering the decretal amount, the appellant shall deposit the balance amount within two weeks from the date of such computation by the concerned M.A.C.T. If there is any surplus amount left after payment of the decretal amount, the Tribunal shall refund the said amount to the appellant on production of an authenticated copy of this Court.

9. The office is directed to transmit the amount of Rs.25,000/- deposited by the appellant as and by way of statutory deposit to the concerned M.A.C.T. expeditiously.

10. In view of dismissal of the First Appeal, Civil Application No.3752 of 2019 does not survive and is accordingly disposed of.

11. All pending civil applications, are disposed of. There shall be no order as to costs.

(R.D. DHANUKA, J.)