

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****FIRST APPEAL NO. 1743 OF 2019****ALONGWITH****CIVIL APPLICATION NO. 958 OF 2018****IN****FIRST APPEAL NO. 1743 OF 2019****Reliance General Insurance Company Limited Appellant****VERSUS****Smt.Sankita Sunil Patil & Ors.****..... Respondents****ALONGWITH****CIVIL APPLICATION NO. 3366 OF 2019****IN****FIRST APPEAL NO. 1743 OF 2019****Smt.Sankita Sunil Patil & Ors.****..... Applicants****IN THE MATTER BETWEEN****Reliance General Insurance Company Limited Appellant****VERSUS****M/s.Navyug Dal Mill & Ors.****..... Respondents**

Mr.Rahul Mehta, i/b. M/s.KMC Legal Venture for the Appellant/Applicants in CAF/958/2018.

Mr.Sandeep Mishra for the Respondent nos. 1 to 6 and for the Applicants in CAF/3366/2019.

CORAM : R.D. DHANUKA, J.**DATE : 29th JANUARY, 2020****P.C.**

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 16th December, 2016 passed

by the Motor Accident Claim Tribunal, Thane holding the appellant and the original opponent no.1 jointly and severally liable to pay compensation of Rs.17,37,000/- including NFL amount of Rs.50,000/- with interest at the rate of 9% per annum from the date of the application till realization to the same to the respondent nos. 1 to 6 (original applicants).

2. By consent of the appellant and the original applicants, First Appeal is heard finally.

3. 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 6 that Mr.Sunil Gopal Patil who was the husband of the appellant no.1, father of the appellant nos. 2, 3 and 4 and son of the appellant nos. 5 and 6 died in the motor accident occurred on 31st May, 2010 arising out of the use of truck no. MH-20-F-5945 (hereinafter referred to as the offending vehicle) owned by the original opponent no.1 which vehicle was ensured with the appellant. It was the case of the respondent no.1 that the said offending vehicle was driven by the driver of the said vehicle in rash and negligent manner thereby causing death of the said deceased Mr.Sunil Gopal Patil.

5. The respondent nos. 1 to 4 filed an application for seeking compensation before the M.A.C.T. The said deceased was proceeding towards his home on his motorcycle with other friend with full care and caution by the left side of the road and when they reached near forest gate at village Kehle, the offending truck came from opposite

side with high and uncontrollable speed in rash and negligent manner and gave dash to the motorcycle and as a result, the deceased fell on the road and sustained grievous injuries and succumbed to those injuries.

6. The application filed by the respondent nos. 1 to 5 was opposed by the original opponent no.1 and also by the appellant. The appellant denied the claim for compensation on various grounds. It was one of the defence raised by the appellant that a copy of the cover note number and the agency code no. 557613 on the cover note had not been found as per vendor code list of the appellant. The appellant alleged that the appellant had neither issued any cover note nor any insurance policy in favour of the offending truck no. MH-20-F-5945 for the period from 29th May, 2010 to 28th May, 2011. It was also contended that the driver of the offending truck had no valid and effective driving licence at the time of accident and hence there was breach of terms and conditions of the insurance policy.

7. The Tribunal framed five issues for determination. The respondent nos. 1 to 5 filed an affidavit of evidence of respondent no.1 who produced several documents including certified copies of F.I.R., information/statement of Mr.Namdeo Bhavar about the accident, panchnama of spot of incident, panchnama of the offending truck, inquest panchnama, cover note for package policy of appellant, P.M.report, school leaving certificate, death certificate and PAN card of the deceased. The original opponent no.1 did not lead any evidence. The appellant filed affidavit of Mr.Amit Ashwin Sharma and relied upon RTO information of offending truck, letter of the appellant company about the cover note of the insurance policy dated 29th May,

2010.

8. The Tribunal passed a judgment and award dated 16th December, 2016 directing the appellant and original appellant to jointly and severally pay compensation of Rs.17,37,000/- including NFL amount of Rs.50,000/- with interest at the rate of 9% per annum from the date of application till realization. The original opponent no.1 had not filed any appeal against the said judgment and award. The appellant has impugned the said judgment and award in this appeal.

9. Mr.Mehta, learned counsel for the appellant invited my attention to some of the findings rendered by the Tribunal in the impugned judgment and award and would submit that the policy produced by the respondent nos. 1 to 6 in respect of the offending vehicle was fake and was not a genuine policy. He submits that the driver of the offending vehicle also did not have any valid licence on the date of the accident and thus the appellant was not liable to make any payment for compensation. According to the learned counsel, liability if any was of the original opponent no.1 and thus even if this court comes to the conclusion that at the first instance the appellant is liable to pay the amount to the respondent nos. 1 to 6, the appellant shall be permitted to recover the said amount from the original opponent no.1.

10. Insofar as the quantification of the claim awarded by the Tribunal is concerned, Mr.Mehta invited my attention to the findings rendered by the Tribunal in paragraphs 9 to 11 and would submit that the Tribunal could not have awarded the said compensation.

11. Learned counsel appearing for the respondent nos. 1 to 6 on the

other hand relied upon the findings rendered by the Tribunal and would submit that the appellant had not examined any witness before the Tribunal. The compensation awarded by the Tribunal is in conformity with the principles of law laid down by the Supreme Court in case of ***Sarla Verma & Ors. vs. Delhi Transport Corporation and another, 2009 ACJ 1298*** and in case of ***Rajesh & Ors. vs. Rajbhir Sing and others, 2013 ACJ 1403*** and subsequent judgments delivered by the Supreme Court on the issue of compensation.

12. A perusal of the record indicates that though the appellant had raised an issue that the policy produced by the respondent nos. 1 to 6 was a fake policy, the appellant admittedly did not produce any police complaint against the owner who sought to rely upon the alleged fake policy. The appellant admittedly also did not examine any person from the office of the RTO regarding particulars of the offending truck. The Tribunal accordingly has rendered a finding that simply because insurance particulars are not given in RTO information, it could not be said that the appellant had proved its defence that on the date of accident, the offending truck was not insured with it. Mr.Mehta, learned counsel for the appellant could not deny that no complaint regarding policy being fake was filed by his client to the police.

13. After considering the oral and documentary evidence led by the respondent nos. 1 to 6 and by the appellant, the Tribunal rightly rendered a finding that the evidence produced by the appellant was not sufficient to state that the cover note Ex.40 produced by the respondent nos. 1 to 6 which was given by the police was fake. I do not find any infirmity in the findings rendered by the Tribunal on both these grounds urged before this court by the learned counsel for the

appellant.

14. Insofar as quantification allowed by the Tribunal is concerned, it is not in dispute that the respondent nos. 1 to 6 had examined respondent no.1 as a witness who was cross examined by the appellant's counsel. In paragraphs 9 to 11 of the impugned judgment and award, the Tribunal has appreciated the evidence led by the respondent no.1 before the Tribunal to prove the quantification of the compensation made by the respondent nos. 1 to 6. In paragraph (10) of the judgment and award, the Tribunal has allowed loss of consortium at Rs.1,00,000/- to the respondent no.1, loss of care and guidance to the respondent nos. 2 and 3, the minor children of the deceased at Rs.1,00,000/- and funeral expenses in the sum of Rs.25,000/- in addition to the loss which amount was derived on the basis of the evidence led by the respondent nos. 1 to 6. Mr.Mehta, learned counsel could not point of any discrepancy in the compensation awarded by the Tribunal. The Tribunal has considered the principles of law laid down by the Supreme Court in case of **Sarla Verma & Ors.** (supra) and in case of **Rajesh & Ors.** (supra) while awarding various heads of the compensation in paragraph (10) of the impugned judgment and award.

15. I am thus not inclined to accept the submission of the learned counsel for the appellant that the compensation awarded by the Tribunal in favour of the respondent nos. 1 to 6 are on higher side or contrary to the principles laid down by the Supreme Court and this court. In my view, no case is made out by the appellant to permit the appellant to recover the amount if payable to the respondent nos. 1 to 6 from the original opponent no.1.

16. First Appeal is totally devoid of merits and is accordingly dismissed.

17. In view of the dismissal of the First Appeal, none of the civil applications survive and are accordingly disposed of.

18. The respondent nos. 1 to 6 would be at liberty to withdraw the amount out of the amount deposited by the appellant before the M.A.C.T., Thane. If there is any shortfall in the amount of deposit made by the appellant, 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. If there is any surplus amount deposited by the appellant, the same shall be refunded by the M.A.C.T. to the appellant.

19. Office is directed to transmit an amount of Rs.25,000/- deposited by the appellant towards statutory deposit to M.A.C.T. Thane expeditiously.

20. The parties as well as the M.A.C.T. Thane to act on the authenticated copy of this order. No order as to costs.

[R.D.DHANUKA, J.]