

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 33483 OF 2016
ALONGWITH
CIVIL APPLICATION NO. 2408 OF 2017
IN
FIRST APPEAL (ST) NO. 33483 OF 2016

The New India Assurance Co. Ltd.	 Appellant
VERSUS	
Smt.Beena Paul & Ors.	 Respondents

Ms.Poonam Mital for the Appellant.

Mr.Niketan Nakhawa, a/w. Mr.Parvez Daruwalla, i/b. M/s.Mulla & Mulla & Craigie Blunt & Caroe for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 17th FEBRUARY, 2020

P.C.

Learned counsel for the applicant invited my attention to the inadvertent error crept in the order dated 5th December, 2019 insofar as number of the First Appeal is concerned.

2. The number of the First Appeal mentioned as Stamp No.33484 of 2016 in the order dated 5th December, 2019 in Civil Application No. 2407 of 2017 shall be read as First Appeal (Stamp) No.33483 of 2016. Order dated 5th December, 2019 stands corrected accordingly.

3. By this First Appeal filed under section 173 of the Motor Vehicles Act 1988, the appellant has impugned the judgment and award dated 4th May, 2016 passed by the M.A.C.T., Mumbai in M.A.C.P. No. 2547 of 2011 directing the appellant and the respondent no.5 to pay a sum of Rs.40,52,500/- jointly and severally by way of compensation to

the respondent nos. 1 to 4.

4. Learned counsel appearing for the appellant and the respondent nos. 1 to 4 have tendered calculations which according to both the parties shall be paid to the respondent nos. 1 to 4 as against the compensation awarded by the M.A.C.T. by the impugned judgment and award dated 4th May, 2016. The statement tendered by the learned counsel is taken on record and marked 'X' for identification. Learned counsel for the parties state that the operative order of the judgment and award dated 4th May, 2016 be substituted by the amount mentioned in the said statement. Statement is accepted.

5. I, therefore, pass the following order :-

(a) The respondent nos. 1 to 4 would be entitled to recover a sum of Rs.40,92,500/- from the appellant towards compensation with simple interest thereon at the rate of 9% per annum from the date of presentation of the application till entire realization of the amount inclusive of NFL amount under section 140 of the Motor Vehicles Act. The respondent nos. 1 to 4 would be entitled to recover the said amount out of the amount deposited by the appellant before the M.A.C.T.

(b) The respondent nos. 1 to 4 would be entitled to withdraw the decretal amount awarded by the judgment and award dated 4th May, 2016 and modified by this order in the proportion already decided in the said judgment and award dated 4th May, 2016 out of the amount deposited by the appellant. If there is any shortfall in the amount of deposit made by the appellant,

the same shall be deposited by the appellant with the M.A.C.T. within two weeks from the date of the computation from the M.A.C.T.

(c) If there is any surplus amount after paying the decretal amount to the respondent nos. 1 to 4, the same shall be refunded to the appellant.

(d) Office is directed to transmit an amount of Rs.25,000/- deposited as and by way of statutory deposit to the M.A.C.T. expeditiously.

(e) The operative part of the judgment and award dated 4th May, 2019 is substituted by the aforesaid order.

(f) The parties as well as the M.A.C.T. to act on the authenticated copy of this order.

(g) In view of the disposal of the First Appeal, Civil Application No.2408 of 2017 is also disposed of as infructuous. No order as to costs.

(h) If the appellant has not paid the amount of cost awarded by this court while passing an order of condonation of delay in filing First Appeal, the appellant is directed to comply with the said order within one week from today.

[R.D.DHANUKA, J.]