

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

**FIRST APPEAL NO.620 OF 2017
ALONG WITH
CIVIL APPLICATION NO.221 OF 2017**

United India Insurance Co. Ltd. .. Appellant/Applicant

Vs.

Abdul Salam Babullah Shaikh & Ors. .. Respondents

Mr.Rahul Mehta i/by M/s.KMC Legal Venture for the appellant/applicant.
Mr.Sandeep Mishra for the respondent nos.1 and 2.

CORAM : R.D.DHANUKA, J.

DATE : 18th February 2020

P.C.:

. Learned counsel for the respondent nos.1 & 2 undertakes to file vakalatnama within one week from today. Undertaking is accepted .

2. By this appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original opponent no.2) has impugned the judgment and award dated 28th September 2016 passed by the MACT, Thane directing the appellant and the respondent no.3 to pay compensation of Rs.14,63,073/- including NFL amount of Rs.50,000/- with interest @9% p.a. from the date of application till realisation. Trial Court also granted liberty to the appellant to recover the amount paid by it towards satisfaction of the award from the respondent no.3 (original opponent no.1-owner of the offending vehicle) on the basis of the said award.

3. By consent of the appellant and the respondent nos.1 & 2, first appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under : -

4. It was the case of the respondent no.1 that deceased Irshad Abdul Salam Shaikh was working with his employer as a Labourer and his monthly income was Rs.8,000/- at the time of accident. On 14th August 2011, when he was proceeding towards Kalyan on the offending motorcycle as a pillion-rider and at about 9.45 p.m., the driver of the offending motorcycle driven the same in a high and uncontrollable speed and dashed one motor bus from behind and as a result, the deceased fell down on the road unconscious and sustained injuries.

4. Parent of the said deceased filed an application before the MACT, Thane for compensation. The appellant filed written statement before the MACT and denied the claims made by the parent of the said deceased.

5. Trial Court formulated four issues for determination. The respondent no.1 entered the witness box and produced various documents including certified copies of FIR, Panchnama of spot of incident, inquest panchnama, insurance policy, P.M. report, FIR under Section 154 of Criminal Procedure Code and various other documents. Those documents

are marked as Exhibits by the MACT. The Tribunal directed the appellant and the respondent no.3 to pay compensation of Rs.14,63,073/- to the respondent nos.1 & 2. The Tribunal also directed the appellant to recover the amount paid by it from the original opponent no.1.

6. Mr.Mehta, learned counsel for the appellant invited my attention to the findings rendered in paragraphs 10 and 14 of the impugned judgment and award and would submit that the Tribunal could not have considered monthly income of Rs.8,000/- considering the fact that the said deceased was aged 20 years at the time of accident.

7. The next submission of the learned counsel is that the Tribunal had already rendered a finding that driver of the offending vehicle did not have valid license on the date of accident.

8. In so far as the first submission of the learned counsel for the appellant is concerned, a perusal of the finding rendered by the Tribunal indicates that the said deceased was a Labourer. In my view, the Tribunal has rightly awarded the just and reasonable compensation considering the income of Rs.300/- per day approximately and has rightly considered the monthly income of Rs.8,000/-. The Tribunal has rightly allowed the compensation towards future prospects by adding 50% of

the amount of Rs.8,000/- by allowing future prospects of Rs.4,000/- considering 20 years age of the deceased at the time of accident. I do not find any infirmity with that part of the findings rendered in the impugned judgment and award.

9. In so far as the findings rendered in paragraph 14 is concerned, the said findings are in favour of the appellant and more particularly to the effect that the driver of the offending vehicle did not have valid license. After recording of such finding by the Tribunal, the Tribunal directed the the appellant and the respondent no.3 to pay compensation of Rs.14,63,073/- including NFL amount of Rs.50,000/- with interest @9% p.a. from the date of application till realisation. Trial Court also granted liberty to the appellant to recover the amount paid by it towards satisfaction of the award from the respondent no.3 (original opponent no.1-owner of the offending vehicle) on the basis of the said award. The original opponent no.1 has not filed any appeal against the said judgment and award dated 28th September 2016. I do not any infirmity in the impugned judgment and award. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the first appeal, pending civil applications, if any, do not survive and are accordingly disposed of.

10. The respondent nos.1 & 2 would be at liberty to withdraw the entire amount with interest deposited by the appellant before the Trial Court on production of the authenticated copy of this order.

11. In view of the fact that the Tribunal had already permitted the appellant to recover the amount paid by it towards satisfaction of award from the original opponent no.1 i.e. the owner of the offending vehicle, the appellant would be at liberty to recover the said amount after paying the said amount first to the respondent nos.1 and 2 by filing an application in the execution proceedings before the Executing Court against the original opponent no.1.

12. In view of the aforesaid order, if there is any shortfall in recovering the amount by the appellant, the appellant shall deposit the said shortfall amount within two weeks from the date of computation of the said amount. If there is any surplus left after payment of decretal amount, the same shall be refunded to the appellant. Office is directed to transmit the statutory deposit of Rs.25,000/- to the concerned trial Court expeditiously. Parties as well as the concerned trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.