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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1181 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.15414 OF 2019

Bharti AXA General Insurance Co. Ltd.	...Appellant
V/s.	
Smt.Archanadevi S. Pandey & Ors.	...Respondents

Mr.Nikhil Mehta i/b M/s.KMC Legal Venture for the Appellant.

Mr.Sameer M. Mangaonkar for the Respondent Nos.1 and 3 to 6.

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

P.C. :-

1. By this First Appeal filed by the appellant (original opponent no.2) under section 173 of the Motor Vehicles Act, 1988, the appellant *inter-alia* impugned the judgment and award dated 15th February, 2018 passed by the Motor Accident Claims Tribunal, Thane in MACP No.173 of 2011 allowing the claims partly made by the respondent nos.1 to 6. By consent of the appellant and the respondent nos.1 to 6 this First Appeal is heard finally.

2. The first submission urged by the learned counsel for the appellant is that when the deceased met with an accident the offending vehicle was driven by him under the influence of liquor and thus the Tribunal could not have awarded any compensation against

the appellant. The next submission of the learned counsel is that the monthly income of the said deceased could not have considered as Rs.6,000/- per month but could at most be considered at Rs.5,000/- per month. Without prejudice to the rights and contentions of both the parties, they have tendered the calculation before this Court showing compensation of Rs.11,41,000/-.

3. Insofar as the submission of the learned counsel for the appellant is concerned, Mr.Mehta, does not dispute that though specific issue was raised by the appellant before the Tribunal in the written statement, the appellant did not bother to lead any evidence before the Tribunal. The appellant had examined the driver of the offending vehicle to prove the case before the Tribunal. The said witness however, could not prove the allegations that the said deceased was under the influence of liquor. The Tribunal after considering oral evidence rightly rejected the contention raised by the appellant. I do not find any infirmity with the impugned judgment and award rendered by the Tribunal.

4. Insofar as the second submission of Mr.Mehta, learned counsel for the appellant that the Tribunal could not have awarded the compensation of more than Rs.5,000/- per month for the purpose of computing the loss of dependency is concerned, learned counsel for the original applicants states that his clients have no objection if the amount of Rs.6,000/- per month is reduced to Rs.5,000/- per month. Statement is accepted.

5. The respondent no.2 has expired. Leave to amend to delete the name of the respondent no.2 is granted. The legal heirs of the respondent no.2 are already on record. The amendment to be carried out forthwith. Re-verification is dispensed with.

6. In view of the first submission of Mr.Mehta, learned counsel for the appellant having been rejected by this Court, in my view the Court can consider the compensation computed by both the parties without prejudice to the rights of both the parties at Rs.11,41,000/-.

7. I therefore, pass the following order :-

a). The judgment and award dated 15th February, 2018 passed by the M.A.C.T., Thane is substituted by the following order :

b). The respondent nos.1 and 3 to 6 would be entitled to recover an amount of Rs.11,41,000/- from the appellant with interest at the rate of 8% from the date of application till realization inclusive of NFL amount. Insofar as the amount coming to the share of the respondent no.2 is concerned, since the respondent no.2 has expired, her amount shall be equally distributed among the other legal heirs of the said deceased. The amount payable under the judgment and award dated 15th February, 2018 and modified by this order shall be recovered out of the amount deposited by the

appellant before the Tribunal.

c). If there is any short fall in recovering the decretal amount modified by this judgment, the appellant shall deposit the balance amount within two weeks from the date of such computation by the M.A.C.T. If there is any surplus amount left after payment of the decretal amount to the respondent nos.1 and 3 to 6, the Tribunal shall refund the said amount to the appellant on production of an authenticated copy of this Court.

d). 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 M.A.C.T., Thane expeditiously.

8. In view of disposal of the First Appeal, Civil Application (Stamp) No.15414 of 2019 for withdrawal of the amount does not survive and is accordingly disposed of. All pending applications, if any, also stand disposed of.

9. All parties as well as the M.A.C.T., Thane to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)