IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1709 OF 2021
AND
CIVIL APPLICATION NO. 14266 OF 2019
IN
FIRST APPEAL NO. 1709 OF 2021

IFFCO Tokyo General Insurance Co. Ltd.
Through it's authorised signatory,
Aurangabad ..APPELLANT/APPLICANT

VERSUS

Mangal Arjun Chavan and Others ..RESPONDENTS

....

Mr. S.G. Chapalgaonkar, Advocate for appellant/applicant
Mr. R.B. Deshpande, Advocate for respondent nos. 1 to 5

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CORAM : R.G. AVACHAT, J.
DATED : 24th NOVEMBER, 2021

PER COURT :

1. Heard.

2. The challenge in this appeal is to the judgment and award dated 29th January, 2019 passed by the Motor Accident Claims Tribunal, Shrirampur in M.A.C.P. No. 144 of 2017. The challenge is mainly on the ground of involvement of the vehicle and quantum as well.

3. Learned counsel for the appellant – insurance company would submit that there is five days' delay in lodging the report of the accident. The

widow of the deceased was not an eye witness to the accident. Her evidence is, therefore, of little consequence to make out involvement of the vehicle in question. On the question of quantum, learned counsel would submit that the deceased was running an electronic shop in a remote place. However, there is no concrete evidence to prove his income. The notional income of Rs.8,000/- per month has, therefore, been on higher side.

4. Considered the submissions made by learned counsel for the appellant and respondents as well. Perused the evidence on record. Although the widow of the deceased was not an eye witness to the accident, she referred in her evidence police papers indicating the involvement of the vehicle in question. Her evidence in that regard appears to have not been traverse in her cross examination. On investigation, charge-sheet has been filed against the driver of the offending vehicle. There is no contra evidence to disbelieve her claim.

5. On the question of quantum of compensation, it appears that the learned counsel, who appeared for the appellant – insurance company before the tribunal gave a concession to assume income at Rs.8,000/- per month. The tribunal, however, considered it at Rs.9,000/- per month and worked out the compensation in terms of the Apex Court judgment in the case of **National Insurance Company Vs. Pranay Sethi** reported in **(2017) 16 SCC**

680. Perusal of the impugned judgment and award would indicate that each of the claimants, who are five in number, have not been granted compensation on the ground of loss of love and affection. The same should have been granted in terms of the Apex Court judgment in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and Others** reported in **(2018) 18 SCC 130**. As such, even if we consider the claim of the appellant – insurance company that assumed income is somewhat on higher side, the respondents – claimants are very much justified in defending the award, since they have not been granted Rs.40,000/- each on account of loss of love and affection.

6. As such, the amount of compensation awarded appears to be just and reasonable one. No case is made out for interference with the impugned judgment and award. In the result, the appeal fails. Same stands disposed of. In view of the same, civil application also stands disposed of.

7. The amount in deposit be paid to the respondents – claimants alongwith interest accrued thereon, immediately.

(R.G. AVACHAT, J.)

SSD