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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 74 OF 2019

**RELIANCE GENERAL INSURANCE
COMPANY LIMITED**

....APPELLANT

V/s.

**SMT. RANJANA SHANTARAM KAMBLE
AND ORS**

.....RESPONDENTS

Ms. Shalini Shankar for the appellant
Mr. Vasant N. More for Respondent nos. 1 to 4

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 5, 2021.

P.C.:

1] By consent, present appeal is taken up for final disposal.

2] In M.A.C.P. No. 347/2012, learned Motor Accident Claims Tribunal (Hereinafter referred to as 'Tribunal' for the sake of brevity) at Raigad-Alibaug vide Award/Judgment dated 06/09/2017 awarded compensation of Rs. 9,29,750/- with 9% interest.

3] Insurance Company which is saddled with the responsibility to pay the compensation has approached this Court questioning the aforesaid Award. Advocate Ms. Shalini Shankar, learned counsel appearing for the appellant while questioning the amount of compensation would urge that in absence of proof in regard to the income of the deceased, the Tribunal committed an error by initially considering income of Rs. 8,000/- per month and after deduction at the rate of Rs. 4500/- per month. According to her, but for the statement of the claimant, there is no iota of evidence to support the said findings. That being so, the Tribunal committed an error in awarding excess compensation. She would suggest that income of the claimant who was a daily wager would have been at the rate of Rs. 100/- per day.

4] Advocate Shri. Vasant More, learned counsel appearing for the claimant would oppose the aforesaid contention. According to him, accident of the vehicle which has resulted into death of deceased Shantaram Kamble on whom claimant was dependent was insured with the appellant. He would further claim that even if it is claimed

that monthly income of the deceased was around as Rs. 8,000/- as daily wager, the Tribunal has considered the same by reducing daily income to the tune of Rs. 150/- i.e. @ Rs. 4500/- per month. According to him, the same was rightly formed to be basis for award of compensation. That being so, appeal lacks merits and is liable to be dismissed.

5] On the date of filing of the claim, it appears that daughter of deceased Swati was minor, however, by this time, she has attained majority.

6] It was the case of the claimant that Shantaram was working as daily wager and while returning from his duty on 08/10/2012 as a pillion rider, died in an accident caused by dumper which was insured with the appellant. It appears that accident was caused while negotiating the said vehicle in a reverse direction. Said vehicle which was insured with the appellant passed on the body of the deceased. Shantaram died on 09/10/2012 because of the injuries suffered in the accident.

7] In the claim petition, while claiming compensation, reliance is placed on the status of deceased Shantaram as an employee of Technova company in the capacity of contract labour. Though it is claimed that he was getting consolidated monthly wages of Rs. 8,000/-, however, no evidence to that effect was produced on record. Appellant insurance company vide its objection to the claim petition at Exh. 25 though denied the negligence on the part of the driver of the insured vehicle, however, has not examined any witness in support of their cause of opposing the claim petition to establish the same.

8] Claimants have produced on record copy of F.I.R. at Exh. 30, investigation papers at Exh. 31, spot panchanama at Exh. 32, inquest panchanama at Exh. 33, P.M. report at Exh. 36, death certificate at Exh. 34, insurance policy at Exh. 35.

9] The Tribunal thereafter proceeded to record a finding that Shantaram died in accident, by the dash given by vehicle which was

insured with the appellant.

10] It is required to be noted that claimant no. 2 Sachin, son of deceased Shantaram has given an affidavit in support of claim petition including income. Present appellant were unable to demolish the case of the claimant by establishing that deceased Shantaram was earning less than Rs. 150/- per day in the capacity of daily wager/contract labour.

10] Even though, it is claimed in the petition that deceased Shantaram was earning an amount of Rs. 8,000/- per month towards his monthly wages, Tribunal proceeded to disbelieve the same and awarded compensation based on daily income of Shantaram @ Rs. 150/- per day. The view expressed by the Tribunal after considering the daily income of deceased Shantaram @ Rs. 150/- per day appears to be reasonable view as at the relevant time i.e. on the date of accident, average daily wage income can be inferred to be around Rs. 150/- per day as on 2012.

11] In the aforesaid background, calculation of the Award of compensation based on monthly income of Rs. 4500/- per month i.e. Rs. 150/- per day appears to be quite reasonable.

12] In the aforesaid background, in my opinion, no case for interference is made out.

13] Appeal as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]

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