Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.64 OF 2015

Mr. Brijesh Mahabaleshwar
Halanker, s/o. Mahabaleshwar,
Aged 38 years, r/o. 3rd floor,
Mamta Apartments, Mundvel,
Vasco-da-Gama, Pin 403 802. ...Appellant

Versus

1. The New India Assurance Company
Ltd., Santa Palagia Building, 1st floor, Opp.
Khalap Mansion, Vasco-da-Gama, Goa.

2. Mr. Algaram Ramshriha Saroj,
s/o. Ramshrisha Saroj, major in age,
driver of the truck, r/o. Bldg. No. 6,
R. No. 3/II, Headland Sada,
Mormugao, Goa.

3. Mr. Lalsab Chouhan,
s/o. Ramnath Chouhan, Major in age,
owner of the truck, Bldg, no. 6,
R. No. 3/II, Headland Sada,
Mormugao, Goa.
(deleted as per Order dated 19/1/13 on
exh.)

4. Mr. Premchandra Chauhan,
s/o. Lalsahab Chauhan, major in age,
owner of the truck, Bldg. no. 6,
R. No. 3/II, Headland Sada,
Mormugao, Goa. …Respondents

Mr. A.D. Bhobe, Advocate *for the Appellant*.
Mr. U.R. Timble, Advocate *for Respondent No.1.*

AND
FIRST APPEAL NO.40 OF 2016

The New India Assurance Company
Ltd., Santa Palagia Building,
1st floor, Opp. Khalap Mansion,
Vasco-da-Gama, Goa. ...Appellant

Versus

1. Mr. Brijesh Mahabaleshwar
Halanker, s/o. Mahabaleshwar Halanker,
Aged 35 years, r/o. 3rd floor,
Mamta Apartments, Mundvel,
Vasco-da-Gama, Pin 403 802.
Mobile No.9764268298.

2. Mr. Algaram Ramshriha Saroj,
s/o. Ramshriha Saroj, major in age,
driver of the truck, r/o. Bldg. No. 6,
R. No. 3/II, Headland Sada,
Mormugao, Goa.

3. Mr. Premchandra Chauhan,
s/o. Lalsahab Chauhan, major in age,
owner of the truck, R/o. Bldg. No. 6,
R. No. 3/II, Headland Sada,
Mormugao, Goa. ...Respondents

Mr. U.R. Timble, Advocate *for the Appellant*.
Mr. A.D. Bhobe, Advocate *for Respondent No.1.*

CORAM: M. S. SONAK, J.

DATED: 7th APRIL 2022

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.

2. First Appeal No.40/2016 is instituted by the Insurance Company. Admittedly, no leave was obtained under Section 170 of the MV Act. Therefore, having regard to the order made by the Division Bench of this Court in ***I.C.I.C.I. Lombard General Insurance Co. Ltd., Amravati V/s. Surekha w/o. Prakash Ghurde and ors.***[1], this appeal will have to be dismissed as not maintainable.

3. On the earlier occasion, submission was made that the Insurance Company wishes to press the issue of breach of terms and conditions of the insurance policy. However, it transpires that such issue does not arise and, in any case, the impugned award warrants no interference on these grounds.

4. Therefore, First Appeal No.40/2016 instituted by the Insurance Company will have to be dismissed and is hereby dismissed. However, the dismissal of this appeal will not come in the way of Insurance Company from instituting any other proceedings, if maintainable in law.

5. First Appeal No.64/2015 has been instituted by the claimant. Mr. Bhobe submitted that the compensation determined is inadequate and, therefore, does not constitute just

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compensation. He submitted that the correct multiplier in this case should have been 17 and not 16.

6. Considering the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited V/s. Pranay Sethi & Ors.***[2]***,*** there appears to be no error in applying the multiplier of 16.

7. In fact, the Tribunal has awarded slightly excess compensation under the heads of loss of consortium and funeral expenses. Though compensation to the extent of ₹21,63,600/- is stated to be awarded under the head of loss of estate, factually, this is compensation towards dependency. Considering all these circumstances, no case is made out to interfere with the impugned award.

8. Accordingly, both the appeals are liable to be dismissed and are hereby dismissed. This is, however, subject to what is observed in paragraph 4 above in the context of the First Appeal No.40/2016.

9. The Insurance Company has deposited the awarded amount in this Court. Accordingly, the respondent-claimant will

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be entitled to withdraw the said amount **after six weeks** from today by furnishing proper identification and bank details. The amounts will have to be transferred to the bank account of the claimant directly together with interest, if any, that might have accrued thereon, unless of course the appellant-Insurance Company, in the meanwhile, secures restraint orders for such withdrawal.

10. Both the appeals are disposed of in the aforesaid terms. Misc. Civil Applications, if any, do not survive and even they are disposed of.

M. S. SONAK, J.

NITI K HALDANKAR

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Date: 2022.04.08 11:03:49 +05'30'