

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

FIRST APPEAL NO.837 OF 2017

IFFCO TOKIO General Insurance Co.
Ltd.

...Appellant

Versus

Indubai Karbhari Kurkute and Ors.

...Respondents

...

Ms Varsha Chavan for the Appellant.
Ms Sangeeta Salvi for Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 21ST SEPTEMBER, 2022.

P. C. :-

1. Learned counsel for the Respondents states that Respondent Nos.5 and 6 have expired and the legal representatives are already on record as Respondent Nos.1 to 4. Death certificates are placed on record. Necessary entry be made as against Respondent Nos.5 and 6. Cause title be amended forthwith.

2. By this appeal under Section 173 of the Motor Vehicles Act, 1988, the Appellant -Insurance Company has challenged the impugned judgment dated 31/08/2016 passed by the M.A.C.T, Thane, in claim Petition No.117 of 2014. By the impugned judgment the Claims

Tribunal allowed the Claim Petition filed by Respondent Nos.1 to 6 and awarded compensation of Rs.15,45,894/- with interest @ 8% p.a. from the date of the petition till final realization.

3. During the pendency of this appeal, the Appellant and Respondent Nos.1 to 4 - Claimants have entered into settlement. Learned counsel for the respective parties have placed on record the consent terms, which read thus:-

1. The Respondent No. 1 to 6 hereinabove had filed an application bearing Application No. 117 of 2014 under section 166 of the Motor Vehicles Act, 1988 for recovery of compensation against Respondent No.7 and the Appellants, before the Motor Accidents Claims Tribunal at Thane.
2. The deceased Karbhari Shantaram Kurkute was travelling in ST Bus bearing No. MH-12-EF-6646. There was a head on collision between the said ST Bus and a truck bearing No. MH-04-H-6038 on Kalyan Nagar Highway. Karbhari Shantram Kurkute sustained fatal injuries on account of the impact. Respondent No. 1 is his wife and other legal heirs had filed a claim for compensation before MACT, Thane against the owner and insurer of the motor truck for Rs. 100,000/-.

3. The Learned Member of the Tribunal, after going through the evidence, held that the appellant and Respondent No. 7 were jointly and severally liable to pay compensation of Rs. 15,45,894/- together with interest @ 8 % p.a. from the date of application till realization.
4. Being aggrieved by the said judgment and award dated 31st August, 2016 the Appellant filed an appeal before this Hon'ble High Court.
5. The appellant insurance company has deposited a sum of Rs. 20,19,371/- before MACT, Thane, pursuant to order dated 14th December 2018 passed by His Lordship Justice Mr. A. S. Chandurkar.
6. The appellant insurance company has deposited a sum of Rs. 25,000/- before this Hon'ble Court pursuant to the provisions of section 173 of the M. V. Act, 1988.
7. The appellant insurance company has not adjusted the amount of Rs. 25,000/- deposited by it under para 5 above at the time of depositing the decretal amount.
8. The parties have now arrived at a settlement. It is agreed by and between the parties that out of Rs. 20,19,371/- deposited by the appellant insurance company, an amount of Rs. 50,000/- will be paid to appellant insurance company. The balance amount

together with accumulated interest thereon will be paid to Respondent No. 1 to 4. Respondent No. 5, Shantaram Kurkute expired on 17th October, 2017 and Respondent No.6 Shalubai Shantaram Kurkute expired on 18th September 2018.

9. Rs. 25,000/- deposited by the Appellant in this Hon'ble Court being a pre-requisite under Section 173 of Motor Vehicles Act be refunded to the Appellant with interest, if any, accrued thereon after the said amount is transferred to the Motor Accident Claims Tribunal at Thane.

10. The Respondent claimant agree that they shall not file any appeal or any other proceedings seeking enhancement of compensation as granted to them by MACT, Thane nor have they filed any appeal before this court. If they have filed an appeal, the same shall stand withdrawn by virtue of this consent terms.

11. The Court Fees paid by the appellant while preferring First Appeal be refunded to the appellant as per rules in force.

12. The impugned Judgment and Award dated 31st August, 2016 passed by the Learned Motor Accident Claims Tribunal, Thane in M.A.C.T. Application No. 117 of 2014 shall stand modified to the above extent.

4. The consent terms are signed by the authorised officer of

the Appellant-Insurance Company and by Respondent Nos.1 to 4 and their respective counsel. The parties are present before the Court. They have identified their signatures and admitted the contents of the consent terms. Hence, the consent terms are taken on record and marked 'X' for identification. The statement made in the consent terms is accepted as an undertaking to the Court.

5. The appeal stands disposed of in view of the consent terms filed by the parties.

6. Statutory deposit of Rs.25,000/- be transferred to M.A.C.T., Thane and be paid to the Appellant-Insurance Company along with interest accrued thereon.

7. Court fees, as permissible under the rules be refunded.

8. An amount of Rs.50,000/- out of the compensation of Rs.20,19,371/- be refunded to the Appellant-Insurance Company. Out of the balance amount deposited by the Appellant-Insurance Company 50% be paid to Respondent No.1 with proportionate interest accrued thereon and balance amount be paid to Respondent Nos.2 to 4 with

proportionate interest accrued thereon in equal proportion.

9. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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