IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 367 OF 2022
WITH
INTERIM APPLICATION NO. 2718 OF 2022
IN
FIRST APPEAL NO. 367 OF 2022

Reliance General Insurance Co. Ltd	..	Appellant
Versus		
Ms.Mina Sanjay @ Santosh Surnar & ors	..	Respondents

…

Ms.Shalini Shankar for the appellant.
Ms.Varsha Chavan for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 5th MAY 2022.

P.C:-

1 The present Appeal is filed by the Insurance Company, being aggrieved by the judgment and award dated 9/12/2021 delivered by the MACT, Mumbai on an application filed u/s.166 of the Motor Vehicles Act, by the legal heirs of one Sanjay @ Santosh Surnar in a Motor Accident dated 8/2/2015.

2 Heard learned counsel for the appellant and learned counsel for the respondent. Since a short point is involved in the present Appeal and since the compilation of documents is already

placed on record, the Appeal is argued finally by the respective counsel.

3 One Sanjay Surnar was on foot on Dahisar Check naka to Penkar Pada road at about 15.30 hours on 8/2/2015, when he reached Raj Industry, Kashimira, a motor cycle bearing No. MH-02-CA-9210 being driven in a breath neck speed, knocked him down. He sustained injuries due to the impact and was taken to the hospital. Unfortunately, he succumbed to the injuries on 12/2/2018.

4 His wife and two minor children, along with his mother, instituted a Claim Petition before the MACT, Mumbai u/s.166 of the Motor Vehicles Act, claiming compensation of Rs 25,00,00/- for his death.

The Claim Petition brought on record the age of the deceased as 33 years and his occupation as a driver, being engaged by his employer Ram Dharavate. His monthly salary was projected as Rs.12,500/- and reference was also made to C.R No.I-77/2015 filed with the Kashimira Police Station, Thane. The details of the treatment offered to Sanjay in various hospitals was also set out in the claim application and an expenditure of Rs.2,50,000/- was alleged to have been spent on medicines, conveyance, special diet etc.

The Claim Petition impleaded the owner of the motor cycle as well as the Insurance Company with whom the vehicle was registered as party respondent.

Since the opposite party no.1 did not appear on being served, nor did he chose to file written statement, the claim proceeded ex-parte against him. As far as Insurance Company is concerned, it traversed the claim, by filing written statement (Exhibit-16) and took a stand of complete denial, attributing negligence to the deceased, the liability was sought to be avoided.

5 In support of the claim, the applicant no.1 entered into witness box and brought on record the documents of investigation of the C.R including the FIR, (Exhibit-20), spot panchnama (Exhibit-21), Inquest Panchnama (Exhibit-22), cause of death certificate (Exhibit-23).

Though she was not an eye witness to the incident, she deposed on the basis of the spot panchnama, FIR etc, and re-iterated the details of the claim, instituted. On being subjected to cross-examination, she categorically admitted that she is not an eye witness, but denied the suggestion that the accident had occurred due to any fault of her husband.

6 In order to bring the earnings of the deceased on record, the claimants examined one Sanjay Chotelal Thakur as AW-2, who was into the business of Tourism under the name and style of "Saransh Tours and Travels" and who specifically deposed that the deceased Sanjay was working with him as a driver from the year 2013. She also deposed that he used to pay monthly

salary of Rs.15,000/- to him in cash. After his demise, he had issued a certificate to that effect which was exhibited at Exhibit-30. In the cross-examination, the said witness categorically admitted that the deceased was working with him for about 7 to 8 years, though he was not able to bring on record the vouchers and he used, to pay salary by cash and he has not maintained any muster register.

7 As far as the Insurance Company is concerned, one Aishwarya Ambulkar, the legal Manager of the Insurance Company filed an evidence affidavit and brought on record the Insurance Policy of the victim, which consisted of various terms and conditions and also a charge-sheet filed in C.R.No.77/2015 was also exhibited. In order to make good the defence of the Insurance Company about breach of terms and conditions of insurance policy, the said witness has specifically given the following admission in the cross-examination.

> *"It is true that we had not informed the owner of vehicle that there is breach of terms of conditions of insurance policy. It is true that we had not inquired with RTO authorities in respect of driving licence of driver of offending vehicle. We had not called the driver to furnish his details. It is not true to say that despite of avoidance clause, I am deposing falsely that we are not liable to pay compensation. It is true that avoidance clause provides for pay and recovery. It is not true to say that as I am in service of insurance company I am deposing falsely"*

8 In the wake of the aforesaid documents brought before the Tribunal, the Tribunal proceeded to determine the issue whether the deceased died on account of the injuries sustained by him in the accident, which took place on 8/2/2015 at about 15.30 hours due to rash and negligent driving of a motor cycle bearing No. MH-02-CA-9210. Another issue formulated for determination is whether the insurer who is driver of the offending vehicle, was not holding a valid driving licence at the time of the accident, which was answered in the negative and so also, the burden cast on the insurer to prove that the accident took place on account of sole negligence of the deceased.

Answering the issue nos.2 and 3 in the negative, the Tribunal specifically recorded that no evidence has been brought on record by the Insurance Company, to substantiate the said defence and therefore, it was discarded.

Though the said issue has been raised in the Appeal Memo as a ground for challenge, in my considered opinion, and to the credit of the learned counsel for the appellant that is not pressed into service.

9 The Appeal is filed on another ground, being the exorbitant amount of compensation being awarded to the claimants and the main objection being the salary of the deceased was taken as Rs.15,000/- without any proof being brought on

record to that effect, particularly when his employer had failed to bring any vouchers or muster register to demonstrate the payment of salary of Rs.15,000/-.

10 In order to appreciate the aforesaid contention, I must once again turn to the affidavit of the employer of the deceased – AW 2, who specifically averred that the deceased was working as a driver with him from the year 2013 and he was paying monthly salary of Rs.15,000/-. He also specifically deposed that the salary used to be paid in cash, and he had issued a certificate to that effect after demise of Sanjay, which was exhibited. The said version of the said witness do not get discredited merely on the ground that the vouchers have not been placed on record nor the muster register is maintained. Pertinent to note that AW-2 has deposed that he was the sole proprietor of Saransh Tours and Travels and it can be very well assumed that the relationship between him and his employee Sanjay was informal one, where he did not deem it necessary to maintain a muster register or to issue vouchers, since it was a sole proprietorship run by him.

11 The Insurance Company did not question the engagement of the deceased as a driver by AW-2. When the certificate (Exhibit-30) is brought on record, and which is not discredited by the Insurance Company, the Tribunal cannot said to have committed any flaw in accepting the salary/earnings of the deceased to be Rs.15,000/-.

Considering the said amount as his salary, the computation of compensation is worked out and by applying the multiplier of 17, the loss of dependency is arrived at Rs.32,13,000/-. Over and above, an amount of Rs.15,000/- each came to be awarded towards loss of estate and funeral expenses and the widow of the deceased was held entitled for consortium of Rs.40,000/- and compensation is awarded to the tune of Rs.32,83,000/-.

12 In the wake of above computation, I do not find any legal infirmity in the impugned judgment which has awarded the compensation, considering the salary of the deceased to be Rs.15,000/- per month and since the Insurance Company has failed to refute the said claim by bringing any cogent evidence on record, by upholding the impugned judgment, the present Appeal is dismissed.

In view of the dismissal of First Appeal, Interim Application No.2718/2022 do not survive and is disposed off.

(SMT. BHARATI DANGRE, J.)

Tilak