

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

**FIRST APPEAL (STAMP) NO.96957 OF 2020
WITH
INTERIM APPLICATION NO.16923 OF 2022
WITH
INTERIM APPLICATION NO.16924 OF 2022
IN
FIRST APPEAL (STAMP) NO.96957 OF 2020**

Royal Sundaram General Insurance
Co. Ltd.

...Appellant

Versus

Smt. Chandra Vishnu Bhilare
(Deleted)
2. Gauri Vishnu Bhilare and Ors.

...Respondents

...

Mr. Mukul Mehta for the Appellant.
Mr. Venkatesh Shastri for Respondent Nos.1 to 5.
Mr. C.M. Lokesh for Respondent No.6

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th NOVEMBER, 2022.

P. C. :-

1. Mr. Shastri, learned counsel waives service on behalf of Respondent Nos.1 to 5 and Mr. Lokesh, learned counsel waives service on behalf of Respondent No.6.

2. Considering the narrow controversy involved, with consent matter is heard finally at the stage of admission.

3. Respondent Nos.1 to 5 had filed an application under Section 166 of the Motor Vehicles Act in view of death of Vishnu Dattu Bilare in a motor vehicular accident involving Wagno R Car No.MH 12 NB 2311 and Bus MH 14 CW1673. The Claimants stated that the accident was caused due to rash and negligent driving of the drivers of both the vehicles and hence filed the claim petition against the owners/insured and insurer of both the offending vehicles.

4. Upon considering the evidence on record, the Tribunal held that the accident was caused due to composite negligence of the drivers of both the offending vehicles. The Tribunal awarded compensation of Rs.45,25,000/- with interest @9% per annum from the date of the petition till final realization. The Tribunal further held that the Claimants are entitled to recover the entire compensation either from the insured and insurer of bus bearing No.MH14-CW-1673 referred to as Group A or from insured/insurer of Wagan R No.MH 12 NB 2311 referred to as Group B. The Tribunal further held that the group paying the entire compensation would be entitled to recover 50% of the total compensation from the other group. Being aggrieved by the said order the Appellant-Insurance company has filed this appeal.

5. The insurer and the insured of the bus bearing No.MH14-CW-1673 referred to as Group A have not challenged the judgment and award. It is stated that they have already deposited 50% of the total compensation.

6. The Appellant being the insurer of Wagon R(Group B) has assailed the findings on the issue of negligence. Mr. Mehta, learned counsel for the Appellant submits that the accident was caused solely due to rash and negligent driving by the driver of the offending bus and that the Tribunal was not justified in returning a finding that it was the case of composite negligence. Learned counsel for the Petitioner further submits that the compensation awarded by the Tribunal is not just and reasonable.

7. Per contra, Mr. Shastri, learned counsel for the Respondent -Claimants submits that the Tribunal has rightly attributed negligence to the driver of the Wagon R car. He submits that the compensation awarded by the Tribunal is just and reasonable and the impugned judgment does not warrant any interference.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. The evidence of AW1 reveals that on the relevant date while the deceased was travelling by a scooter, the Wagon R car came from behind and gave a dash on the rear side of the scooter. As a result, the deceased -Vishnu fell on the road and was run over by bus bearing No.MH14-CW-1673. AW1 has stated that both the vehicles were driven in a rash and negligent manner and that the drivers of both the vehicles were responsible for the accident. The Claimants have placed on record the police papers, a perusal of which shows that crime was registered against both the drivers for committing an offence under Sections 279 and 304 A of the IPC. Relying upon this evidence the Tribunal has returned a finding that the accident was caused due to composite negligence of both the vehicles. The finding recorded by the Tribunal is based on evidence on record and does not warrant any interference.

10. As regards the quantum of compensation the Tribunal, upon considering the age and income of the deceased, has computed the compensation at Rs.45,25,000/-as per the principles laid down by

the Apex Court in *Sarla Verma & Ors vs Delhi Transport Corp.& Anr* (2009) 6 SCC 121 and *National Insurance Company Limited cs. Pranay Sethi and Ors. (2017) 16 SCC 680*. The compensation awarded is just and reasonable and does not warrant any interference.

11. Under the circumstances, the appeal is dismissed. The amount as per the impugned judgment be deposited before the Claims Tribunal with interest of 9% per annum within a period of six weeks from the date of the uploading of the order and the same be paid to the Claimants.

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

13. Statutory deposit be transferred to the Claims Tribunal, Pune.

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

(SMT. ANUJA PRABHUDESSAI, J.)