IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.341 OF 2022

WITH

CIVIL APPLICATION NO.1144 OF 2018

WITH

INTERIM APPLICATION NO.1645 OF 2022

IFFCO-TOKIO General Insurance Co. Ltd. .. Appellant

Versus

Geetaben Tikambhai Solanki & Ors. .. Respondents

...

Mr.Rajesh Kanojia with Ms.Sandhya Singh i/b Res Juris for the Appellant.

Ms.Rina Kundu for the Respondents.

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CORAM: BHARATI DANGRE, J.
DATED : 21st APRIL, 2022

P.C:-

1. Heard the learned counsel Mr.Rajesh Kanojia for the Appellant and the learned counsel Ms.Rina Kundu for the Respondents.

The learned counsel for the Appellant has placed on record, the compilation of documents.

2. The Insurance Company has filed this Appeal against the judgment of the M.A.C.T., Thane in M.A.C.P. No.42 of 2009 filed by the respondents/claimants on the death of one Tikambhai Hirjibhai Solanki.

The claim came to be filed by the widow, daughters and son of the deceased, claiming compensation under Section 166 of the Motor Vehicles Act, on account of his death in an accident, which took place on 16/12/2008. The deceased was aged 40 years on the fateful day and was in service of Jain Muni and engaged in the work of carrying Palanquin (Palkhi) and was getting a salary of Rs.5,000/- per month.

3. On 16/12/2008, at about 9.30 hrs., while he was walking on the road and proceeding towards Kaman side alongwith Palanquin of Jain Muni, by side of Kaman Bhiwandi Road and reached in the vicinity of Paye village, opposite to 'Nadikinara Hotel', one motorcycle bearing No.MH-04/DP-3967, proceeding towards Bhiwandi in high speed and driven in a rash and negligent manner, crashed into him. Resultantly, he fell down and sustained serious injuries and succumbed to the same on the very same day.

4. Since, the accident occurred on account of rash and negligent driving on part of the offending motorcycle, the offence came to be registered against the rider of the motorcycle. The claimants claimed the compensation of Rs.1,00,000/-.

In the claim petition, the owner of the motorcycle as well as the Insurance Company with whom the motorcycle was insured, were impleaded as opposite party Nos.1 and 2. Opponent No.1, though served, failed to appear and the claim proceeded ex-parte against him.

5. The Insurance Company i.e. the Appellant before me opposed the claim by filing the written statement (Exh.13). A stand was specifically taken that at the time of the accident, the motorcyclist Nihaz Shah was not possessing valid licence and thus, the claim is bad-in-law, improper and not maintainable against the Insurance Company. The earnings of the deceased were also disputed. It was also pleaded that the motorcyclist and the pillion rider were intoxicated.

6. The claim was taken up for adjudication by the Tribunal and applicant No.1 examined herself as A.W. 1 and relied upon the First Information Report (Exh.20), Panchnama (Exh.21), Inquest Panchnama (Exh.22), P.M. Report (Exh.23), Insurance Policy (Exh.24) and Registration of the vehicle (Exh.25).

Opponent No.2 filed copy of charge-sheet at Exh.35, but did not examine any witness.

Opponent No.2, relying upon the decision of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. Vs.Swaran Singh (2004) 3 SCC 297***, urged that when the driver of the vehicle admittedly did not hold any licence and the same was allowed consciously to be driven by the owner of the vehicle by such person, the insurer is entitled to succeed in his finding and avoiding the liability. But, the attention of the learned counsel for the Appellant is also invited to the very same judgment wherein it has been held that insurer cannot shake of it's liability only by asserting that, at the relevant point of time, the vehicle was driven by a person having no valid licence. Merely because the police papers mention that the motorcycle was not having any valid licence, I do not that the Insurance Company can avoid it's liability completely. However, at the same time, by applying the said position of law, the Insurance Company shall be fastened with the liability to pay compensation, which it can recover from the owner of the vehicle, by applying the principle of "pay and recover".

7. The Tribunal, however, has not granted the aforesaid liberty to the Insurance Company and to that extent, the Judgment and Order passed by the Tribunal, stands modified.

8. As far as the amount of compensation is concerned, the learned counsel for the Appellant is justified in submitting that, considering the age of the deceased to be 40 yeas, the multiplier which is to be applied is 15 instead of 16. At the same time, the learned counsel for the respondents, would submit that the claim petition is filed by the four claimants and, therefore, deduction towards personal expenses ought to have been to the extent of $1/4^{th}$, which is, however, erroneously computed as $1/3^{rd}$.

There cannot be any dispute about the said position, since the law being well settled by this time on the said aspect. Necessarily, the computation by the Tribunal deserves a slight modification and the loss of dependency is re-worked as Rs.8,10,000/- instead of Rs.7,68,000/- by taking into consideration the multiplier of 15. As far as the compensation awarded under the loss of consortium, loss of love and affection and funeral expenses do not call for any interference. Thus, the the total amount of compensation payable would be :-

1.	Loss of dependency	Rs.	8,10,000/-
2.	Loss of consortium	Rs.	1,00,000/-
3.	Loss of love and affection	Rs.	1,00,000/-
4.	Funeral expenses	Rs.	25,000/-
	Total	Rs.	10,35,000/-

9. With the aforesaid modification in the impugned Judgment, the Appeal is partly allowed.

The Tribunal shall award the compensation to the claimants, at the revised rate indicated above.

10. In view of the disposal of the appeal, pending applications do not survive and stand disposed off.

(SMT. BHARATI DANGRE, J.)

M.M.Salgaonkar