IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1385 OF 2022
WITH
INTERIM APPLICATION NO.14584 OF 2023
AND
INTERIM APPLICATION NO.20339 OF 2022
IN
FIRST APPEAL NO.1385 OF 2022

United India Insurance Company Ltd. ...Appellant

Versus

Smt. Ratnabai Suresh Rathod and Ors. ...Respondents

...

Mr. Rahul Mehta i/b. M/s. KMC Legal Venture for the Appellant.
Mr. Ajit V. Alange for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 23rd AUGUST, 2023.

P.C.:-

1. The Appellant-Insurance company has challenged the impugned judgment and award dated 18/05/2022 passed by the learned Member, Motor Accident Claims Tribunal, Thane, in MACP No.155 of 2018. By the impugned judgment and award, the Claims Tribunal awarded compensation Rs. 9,84,200/- with interest at the rate of 6 % p.a. from the date of filing of petition till final realization.

2. Respondent Nos.1 and 2 are the parents of the deceased-Sohan Rathod (hereinafter referred to as 'the Claimants'). He expired on 22/12/2016 in view of the injuries sustained in a motor vehicular accident involving motorcycle No. MH-13/CM-5512 and Truck bearing registration No.HR-38/R-5046. It was the case of the Claimants that the accident was caused solely due to rash and negligent driving of the driver of the offending truck. The Claimants alleged that the deceased was 20 years of age and was doing I.T.I. Motor Mechanic Course and in addition he was also working as a labourer and earning Rs.6,000/- per month. The Claimants alleged that they suffered physical, mental and economic loss due to premature death of their son and claimed compensation of Rs.10,00,000/-. The truck bearing registration No.HR-38/R-5046 was owned by Respondent No.3 and insured by the Appellant herein. The Claimants therefore claimed that the Appellant and Respondent No.3 are jointly and severally liable to pay the compensation.

3. The insured did not contest the proceedings. The Appellant-Insurance Company raised a defence that the driver of the truck involved in the accident was not holding a valid and effective driving license. The Appellant claimed that it is not liable to pay compensation in view of breach of terms of the policy. The Appellant also raised a plea of

contributory negligence.

4. Upon considering the evidence on record, the Tribunal held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle No.HR-38/R-5046. The Tribunal further held that the Appellant had failed to prove that the owner had knowledge that the driver of the vehicle was not holding a valid and effective driving license and that the license of the driver was fake and fabricated. The Tribunal therefore held that the Appellant is liable to pay the compensation.

5. As regards the quantum of compensation the Tribunal considered the monthly income of the deceased at Rs.6,000/- and deducted 50% towards personal expenses of the deceased. Considering the age of the deceased, the Tribunal applied the multiplier of 18 and computed loss of dependency at Rs.09,07,200/-. The Tribunal also awarded compensation of Rs.44,000/- towards loss of filial consortium, Rs.33,000/- towards loss of estate and funeral expenses and thus granted total compensation of Rs.9,84,200/-. Being aggrieved by the award, the Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Mr. Mehta, learned counsel for the Appellant submits that the evidence adduced by the Appellant-Insurance Company amply proves that the driving license produced by the Claimants was fake. He submits that the findings on the issue of breach of terms and conditions of the policy are totally erroneous and cannot be sustained. He submits that the Appellant having proved the breach is not liable to indemnify the insured. Learned counsel for the Appellant states that even otherwise the liability of the Appellant was only to satisfy the claim of the third party and that the Tribunal has failed to grant leave to the Appellant to recover compensation from the insured.

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

8. It is not in dispute that the deceased -son of the Claimants expired due to the injuries sustained in the accident involving truck bearing No.HR-38-R-5046, which was duly insured by the Appellant. There is no challenge to the findings on the issue of negligence. The Appellant only disputes its liability to indemnify the insured for breach of terms and conditions of the policy. Hence, the question for consideration

is whether the Appellant has proved that the insured breached the terms and conditions of the policy.

9. The Appellant claims that the driver of the offending vehicle did not possess valid and effective driving license. The Appellant sought to prove the defense through Mr. Y. Bhismasingh, the Investigating Officer, engaged by the Appellant-Insurance Company. He has produced a copy of the license No.56647/UKL at Exhibit-64 in the name of Arif Jaikam and a letter at Exhibit-54 issued by the District Transport Officer, Manipur stating that the driving license No.56647/UKL stands in the name of Maisnam Anilkumar. On the basis of this correspondence, the Appellant-Insurance Company claims that the driving license is fake.

10. It is pertinent to note that the Appellant had not examined either the driver or the owner of the offending vehicle. The Appellant has also not examined the author of the letter at Exhibit-54 and has thus failed to prove the contents of the said letter and consequently failed to prove that the insured had committed breach of the terms and conditions of the policy. In these circumstances, the Appellant cannot avoid its liability in indemnifying the insured.

11. The next question for consideration is whether the compensation awarded by the Tribunal is just and reasonable.

12. It is on record that the deceased was 20 years of age. He was working as a labourer. In the absence of specific evidence as regards his actual income, the Tribunal has computed the compensation on the basis of notional income of Rs.6,000/- per month. The Tribunal deducted 50% towards personal expenses and added 40% towards future income and considering the age of the deceased, applied multiplier of 18 and computed loss of dependency at Rs.09,07,200/-. The Tribunal awarded Rs.44,000/- towards loss of filial consortium and Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses.

13. It is to be noted that in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and Ors. (2018) 18 SCC 130,*** the Hon'ble Apex Court has held thus:-

> *"21.3 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection,*

companionship and their role in the family unit.

22.Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions worldover have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium. "

14. Hence, both the Claimants are entitled for compensation of Rs.44,000/- each towards loss of filial consortium. Hence, the Claimants were actually entitled for total compensation of Rs.10,28,200/-.

15. The Claimants have not filed an appeal or cross objection for enhancement of compensation. The question which therefore arises is whether this Court can enhance the compensation in the absence of the

appeal or cross objection. In this regard, it would be advantageous to refer to the decision in ***A.P.S.R.T.C. Rep. by its General Manager and anr. V/s. M. Ramadevi and ors. 2008(1) T.A.C. 714 (S.C.)***, wherein the Apex Court while considering the question whether the High Court could have enhanced the compensation in the absence of an appeal by the claimant, reiterated the principles in ***Nagappa v/s.Gurdial Singh and ors. 2003 (2) SCC 274*** that under Motor Vehicles Act there is no restriction that the Tribunal Court cannot award compensation amount exceeding the claimed amount. The obligation of the Tribunal /Court is to do complete justice by awarding 'just compensation' which is reasonable on the basis of evidence produced on record.

16. It is thus well settled that the Tribunal /court is under an obligation to award just and reasonable compensation and there is no embargo in enhancing the compensation in the absence of appeal or cross objection. As stated earlier, the Tribunal has awarded compensation of Rs.9,84,200/. While the original Claimants are actually entitled for total compensation of Rs.10,28,200/-, which in my considered view is just and reasonable compensation.

17. Under the circumstances, the appeal is dismissed. The

Claimants are held to be entitled for compensation of Rs.10,28,200/- with the interest @ 6% per annum from the date of the petition till final realization. The Appellant -Insurance Company is directed to deposit the balance with proportionate interest @ 6% per annum before the Claims Tribunal within a period of six weeks from the date on which the order is uploaded. The compensation deposited by the Insurance Company be paid to the Claimants in equal proportion.

18. Statutory deposit be transferred to M.A.C.T., Solapur.

19. Interim application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)