IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.633 OF 2017

IFFCO TOKIO General Insurance Co. Ltd. 2nd Floor, AFL, House, Lok Bharti Complex, Marol Maroshi Road, Andheri (East), Mumbai-400 067.	}	**….Appellant**

V/s.

1. Smt.Suman Kisan Chaudhari R/o.Shivaji Ganpat Kadam, Mahindra Niwas, Siddharth Nagar, Majiwade, Thane	}	**….Respondent (Original Claimant)**
2. Sunil Megharajamal Raheja Barrack No.293, Room No.07, Awatram Chowk, O.T. Section, Ulhasangar-421 002, District-Thane.	}	**….Original Opposite party**

WITH
CROSS OBJECTION (ST) NO.29368 OF 2019

Smt.Suman Kisan Chaudhari Through her POA holder Mr.Dinkar Kisan Choudhari Age-55 years, Occupation: Housewife (Widow of deceased) R/o.Village & At Post : Wadzire, Tehsil : Parner, District-Ahmednagar, State : Maharashtra, India, Pin-414307	}	**….Appellant/ Respondent No.1 (Orig. Claimant)**

V/s.

1. IFFCO TOKIO General Insurance Co. Ltd. 2nd Floor, AFL, House, Lok Bharti Complex, Marol Maroshi Road, Andheri (East), Mumbai-400 067.	}	**….Respondents /Appellant**

2. Sunil Megharajamal Raheja Barrack No.293, Room No.07, Awatram Chowk, O.T. Section, Ulhasangar-421 002, District-Thane.	} } } }	**….Respondent No.2/Original Opponent/Truck owner**

Ms.Varsha Chavan, for the Appellant in FA No.633 of 2017 and for Respondents in XOBST No.29368 of 2019.

Mr.Yogesh Pande, for Respondent in FA No.633 of 2017 and for Appellant in XOBST No.29368 of 2019.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st DECEMBER 2023

ORAL JUDGMENT :-

. The Appellant-Insurance Company has preferred Appeal against judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Thane. The Claimant's have also filed Cross Appeal for enhancement of the compensation. As both these Appeals are against the same judgment and order, hence, I am deciding it by this common judgment.

2. It is contention of the learned counsel for the Appellant that, accident occurred due to sole negligence of the deceased as he was driving the bus and he dashed the insured

vehicle. The Claimant's have not added the ST Corporation as a party-Respondent before the Tribunal. It should have been added as a party-Respondent. The learned counsel further submitted that, the Tribunal should have considered contributory negligence of the deceased in the said accident. The learned counsel further submitted that, the Claimant's failed to point out, why the Claimant's failed to produce evidence before the Tribunal when evidence was available with them. The learned counsel further submitted that, the Claimant No.1 was aware that there were six Claimants then also why she did not mention in the Claim Petition filed by her. It was her fault. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that, there are six Claimants, but the Claim Petition was filed by widow of deceased only. She is illiterate and concerned Advocate had not guided her properly. The learned counsel further submitted that, the Tribunal has considered monthly salary of deceased at Rs.25,700/- but his last pay was Rs.35,688/-. The said evidence could not be produced

before the Tribunal. The learned counsel further submitted that, deceased owned agricultural land but agricultural income was not considered by the Tribunal while considering monthly income of deceased. Hence, requested to allow the Cross-objection or remand the matter for fresh hearing before the Tribunal. The learned counsel for the Appellant strongly objected for remand of the matter as the Tribunal has passed judgment in the year 2016 and if matter is remanded back, the Insurance Company has to pay interest for these seven years.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

5. It appears from the record that, there are other Claimant's but Claim Petition was filed by widow of deceased. From the Record and Proceedings, it appears that, original Claimant had put her thumb impression, instead of signature on Claim Petition. It shows that, she is illiterate and the concerned Advocate did not take proper instructions from the original Claimant about joining of the other Claimant's, as party in Claim Petition. Moreover, the issue of salary of deceased is raised by the

Claimant and agriculture income of deceased is not considered by the Tribunal. The learned counsel for the Appellant-Insurance Company has raised point of not joining ST Corporation as a party-Respondent. Considering all these facts, I find it fit case to remand the matter for fresh hearing before the Tribunal. Both parties can lead evidence before the tribunal in support of their claim. The Appellant-Insurance Company can file Application to add ST Corporation as a party. The Tribunal shall decide it on its own merit.

6. In respect of issue of interest of six years on enhanced amount if the Claimants succeed, the Tribunal shall decide it on its own merit.

7. In view of above, I pass following order.

ORDER

(i) The Appeal and Cross Objection partly allowed.

(ii) The judgment and order passed by the Tribunal is quashed and set aside.

(iii) The matter is remanded to the Tribunal, Thane for fresh hearing. The parties can lead evidence in support of their Claim, if they desired.

(iv) All contentions of both the parties are kept open.

(v) The award amount along with interest deposited by the Appellant-Insurance Company shall remain deposited, till the final disposal of the Claim Petition.

(SHIVKUMAR DIGE, J.)