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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

VASANT ANANDRAO IDHOL
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FIRST APPEAL NO.274 OF 2022

The Oriental Insurance Co. Ltd. (HUB) ...Appellant
V/s.
Meneerabegum A. Khan & Ors. ...Respondents

Mr.Anuja Divadkar with Ms.Anisha Didwania i/b NDB Law for the Appellant.

Mr.T.J. Mendon with Mr.T.R. Kale for the Respondent Nos.1 to 5.

CORAM : RAJESH S. PATIL, J.
DATE : 1ST NOVEMBER, 2023.

P.C. :-

1. This First Appeal is filed under Section 173 of the Motor Vehicles Act, by the Insurance Company, challenging the judgment and award dated 7 August 2017, passed in Claim Application No.2 of 2012, by MACT, Mumbai.

2. On 2 August 2011, at around 21.00 Hrs., one Mr.Anwar Miya Mohd. Khan, was crossing S.V. Road below Mahim Causeway Bridge and proceedings towards Bharat Nagar. At that time motor taxi bearing registration No.MH O1 - 9578 dashed him and said Mr.Anwar Miya Mohd. Khan sustained grievous injuries. He was admitted in Bhabha Hospital till 12 September 2011 and thereafter on

the advice of doctor, he was further shifted to Gurunanak Hospital. He was admitted in Gurunanak Hospital till 26 September 2011. However, Mr.Anwar Miya Mohd. Khan ultimately on 10 November 2011 succumbed to death in the hospital.

3. At the relevant time, the offending vehicle was insured with Oriental Insurance Company Limited. The legal heirs of the deceased Mr.Anwar Miya Mohd. Khan thereafter on 2 January 2012 filed a claim petition before MACT, Mumbai, being Application No.2 of 2012. The Insurance Company filed its written statement and contended that all the allegations raised in the claim petition are false and not maintainable. Evidence was led on behalf of the claimant by four witnesses including Dr.Abhay Raut, who gave treatment to the deceased.

4. On behalf of the Insurance Company, no evidence was led.

5. The Tribunal framed five issues and same were answered as follows :-

> 1. Do Applicants prove that deceased died while undergoing treatment in Gurunanak Hospital in consequence of injuries sustained on 02.08.2011 in a road traffic accident as alleged ? ... ***Affirmative***.
>
> 2. Do they further prove that accident took place because of negligence the part of the driver of Motor Taxi No. MH-01-AM-9578 as alleged ? ...***Affirmative***.

3. Do Insurer prove that accident took place due to contributory negligence of deceased Or that accident was unavoidable or inevitable ...***Negative.***

4. Whether Applicants are entitled to compensation? If yes, to what extent and from whom ?

...Yes, Rs. 5,62,480/- from Opp. party and Insurer.

5. What order? ...As per final order.

6. The matter was thereafter heard on merits and by its judgment and award dated 7 August 2017, the claim petition was partially awarded to the extent of Rs.5,62,480/- with interest at the rate of 7.5% from the date of the application till realization.

7. The Insurance Company being dis-satisfied with the impugned award, challenged the same by way of present First Appeal. The Insurance Company has deposited the entire award amount with interest before MACT, Mumbai. 50% of the amount deposited by the Insurance Company was withdrawn by the Claimants during the pendency of the First Appeal.

8. Ms.Anuja Divadkar, advocate appearing for the Insurance Company submitted that she has filed additional affidavit dated 11 July 2022. She submitted that along with the said additional affidavit, she has filed certificate dated 24 September 2013 of one Advait Consultants, to prove that the deceased had not died due to accident injuries.

9. She has further submitted that her challenge is as regards the quantum on which the claim petition was awarded. She has submitted that as far as medical expenses are concerned, since the Appellant had produced on record medical bills, there is no defence as far as the Insurance Company is concerned.

10. She further submitted that as far as dependency is concerned, even on the said count, the Insurance Company has not disputed the issue.

11. However, the Insurance Company is disputing the grounds of consortium, as the amount of Rs.1,00,000/- was granted for consortium, which according to her should be Rs.40,000/-. She is also challenging the quantum of award for funeral charges. She relies upon the judgment of the Supreme Court in case of **National Insurance Company Limited vs. Pranay Sethi** reported in ***(2017) 16 SCC 680***, as far as quantum is concerned.

12. She relies upon the medical certificate issued by MCGM, giving cause of death. She submitted that, if one looks into the death certificate, it can be seen that the deceased had dies not due to accidental injuries.

13. Ms.Divadkar, submitted that the impugned award, be set aside, and the Appeal be allowed.

14. On the other hand, Mr.Mendon appearing for the original

Claimant submitted that as far as the additional affidavit is concerned, the same cannot be looked into by the Court, as there are no reasons given in the affidavit, why the certificate of Medicolegal Services dated 24 September 2013 should be considered by this Court in Appeal. Mr.Mendon, has also submitted that the Insurance Company has not submitted that under which provisions of law the said Medical opinion should be considered in statutory First Appeal. Mr.Mendon, further submits that as far as the argument of consortium is concerned, the consortium has to be granted to each of the Claimants as per the guidelines given by Supreme Court in ***Magma General Insurance Co. vs. Nanu Ram,*** reported in ***(2018) 18 SCC 130***. Mr.Mendon's further submission that as far as funeral expenses and loss of death, Supreme Court in case of ***United India Insurance Co. Ltd. vs. Satinder Kaur & Ors,*** reported in ***2020 ACJ 2131*** and ***N. Jayashree & Ors. vs. Cholamandalam MS General Ins. Co.Ltd.*** reported in ***2021 ACJ 2685***, concluded that it should be 10% increase of every three years from the date of cause of accident.

15. Mr.Mendon further submitted that as far as medical certificate of MCGM is concerned, the same is not proved in Lower Court. In fact no witness was examined by the Insurance Company in the matter. He further submitted that the evidence of Dr.Raut is relevant piece of evidence, as Dr.Raut gave treatment to the

deceased. Mr.Mendon further submitted that as regards the nexus between the injuries and death is concerned, he has referred two judgments, one by the Supreme Court in ***United India Insurance Co. Ltd. vs. Satinder Kaur,*** reported in ***2020 A.C.J. 2131*** and another of Division Bench of Gujarat High Court in ***Ranchodbhai Somabhai vs. Babubhai Bhilbhai & Ors.*** reported in ***1982 A.C.J. (Supp.) 548***. Mr.Mendon therefore, submitted that there is no case made out to show perversity in the impugned judgment and award. Therefore, he submits that the First Appeal should be dismissed with costs.

16. I have heard both the counsel and I have gone through the records.

17. As far as additional affidavit dated 11 July 2022, filed by the Insurance Company in the present First Appeal is concerned, learned counsel for the Insurance Company was not able to show under which provisions of law the said affidavit is filed by her. Since this additional affidavit is not an application under Order 41 Rule 27 of Code of Civil Procedure, this Court is not bound to consider the same. So also there is no answer from the counsel of the Insurance Company as to why the so called medical certificate dated 24 September 2013 was not produced during the evidence being led before the MACT. Therefore, I am not considering the additional affidavit and its contents.

18. As regards the quantum, even though learned counsel for the Insurance Company has relied upon the judgment of **Pranay Sethi** (supra) as regards the consortium to be fixed at Rs.40,000/-. The Supreme Court in ***Pranay Sethi*** (supra) does not deal with the issue whether the consortium should be granted to each of the claimants separately. The said issue has been settled in ***Magma*** (supra). As regards funeral expenses, the said point has been dealt with by the Supreme Court in case of ***Satinder Kaur & Ors,*** (supra) and ***N. Jayashree & Ors.*** (supra).

19. Even though the deceased died on 10 November 2011 and the accident had taken on 2 August 2011, it is matter of fact that the deceased was under the treatment at the time of accident till the time of his death. He was first admitted to the Bhabha hospital from the date of accident till 12 September 2011 and thereafter from 12 September 2011 till 26 September 2011 in Gurunanak Hospital. The evidence of Dr.Raut stated that the deceased was under his treatment till the time of his death and according to him, traffic accident is the primary reason due to which the deceased died this evidence is sufficient to prove that the deceased has died not a natural death but due to unfortunate accident. Supreme Court in ***Satinder Kaur & Ors,*** (supra) held that the nexus between the injuries and the death so also the judgment of Division Bench of

Gujarat High Court delivered in the judgment of ***Ranchodbhai Somabhai vs. Babubhai Bhilbhai & Ors.*** reported in ***1982 A.C.J. (Supp.) 548*** on the same issue.

20. No case is made out by the Insurance Company to set aside the impugned judgment and award dated 7 August 2017.

21. The First Appeal is dismissed. There shall be no order as to costs.

(RAJESH S. PATIL, J.)