IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 501 OF 2023

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.)...APPELLANT

V/s.

NISHADEVI NARESHKUMAR SETH AND ORS.)...RESPONDENTS

WITH
INTERIM APPLICATION NO.3885 OF 2023
IN
FIRST APPEAL NO. 501 OF 2023
AND
INTERIM APPLICATION NO.7920 OF 2023
IN
FIRST APPEAL NO. 501 OF 2023

Mr.D.S.Joshi a/w. Mr.Pradyumna Thakurdesai, Advocate for the Appellant and for the Applicant in IA/3885/2023.
Mr.T.J.Mendon, Advocate for the Respondents No.1 to 4 and for the Applicant in IA/7920/2023.

CORAM : ABHAY AHUJA, J.

DATE : 27th JULY 2023

P.C. :

1. This is an Appeal challenging the judgment and award dated 17th December 2022 passed by the Motor Accident Claims Tribunal, Mumbai in Motor Accident Claim Petition No.151 of 2017 directing the

Appellant - Insurance Company to pay compensation to the tune of Rs.42,40,500/- with interest at the rate of 7.50% per annum.

2. Mr.D.S.Joshi, learned Counsel for the Appellant, submits that this is a third party claim. The Insurance Company is not contesting that the deceased died due to the negligence of the driver of the insured vehicle. However, learned Counsel submits that the issue is with respect to quantum. Learned Counsel draws the attention of this Court to paragraph 15 of the impugned judgment and award with respect to 'Occupation : Monthly and Actual Yearly Income'. Learned Counsel would submit that although the Applicants claimed that the deceased was doing business of goldsmith and earning Rs.50,000/- to Rs.60,000/- per month, however, as no document to corroborate the same was produced, the Tribunal has held that the occupation and earning of the deceased is not proved. Learned Counsel would submit that despite such a finding, the Tribunal has gone ahead and only on the basis that the body of the deceased was transported from Mumbai to Varanasi by plane, a notional income has been considered as Rs.25,000/- per month. Mr.Joshi also points out that not only that, the Tribunal has gone ahead and awarded Rs.50,000/- which was expended for transportation of the dead body.

3. Mr.Mendon, learned Counsel for the Respondents-claimants would submit that since the deceased is covered by the policy, all such expenses with respect to transportation, would be included in the compensation and the Tribunal has correctly awarded the same.

4. Having heard the learned Counsel and having perused the impugned judgment as well as the grounds, the following order is passed :

ORDER

(i) Admit.

(ii) Registry is directed to call for Record and Proceedings within a period of four weeks.

(iii) Let the compilation of documents be filed within a period of four weeks thereafter with a copy to the other side.

(iv) List on **21st September 2023**.

INTERIM APPLICATION NO.7920 OF 2023

5. This is an application seeking withdrawal of the decretal amount deposited by the Appellant – Insurance Company in the Tribunal. Mr.Mendon, learned Counsel for the Respondents-claimants, would submit that the Applicants are the widow, children and mother of the

deceased, who met with an accident on 27th July 2016 resulting in his death and were completely dependent on the income of the deceased. Learned Counsel would submit that due to the death of their sole bread winner and financial supporter, the Applicants being in need of money, seek to withdraw the amount deposited in the Tribunal.

6. Mr.Joshi, learned Counsel for the Appellant-Insurance Company, has no objection if some amount is allowed to be withdrawn, subject to terms and conditions.

7. Having heard the learned Counsel and having perused the application, this Court is of the view that interests of justice would be served if 30% of the amount deposited in the Tribunal is allowed to be withdrawn by the applicants in the manner and proportion as set out in the impugned judgment and award, subject to an undertaking that in the event the Appeal is allowed, the Applicants would bring back the amount so withdrawn along with accrued interest within a period of four weeks.

8. The Interim Application, accordingly, stands disposed.

(ABHAY AHUJA, J.)