IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 13 OF 2017
WITH
CIVIL APPLICATION NO. 74 OF 2017
IN
FIRST APPEAL NO. 13 OF 2017

The New India Assurance Co. Ltd. …. Appellant
v/s.
Smt. Varsha Ravindra Daithankar
and ors. …. Respondents

WITH
CIVIL APPLICATION NO. 67 OF 2023
IN
FIRST APPEAL NO. 13 OF 2017

Smt. Varsha Ravindra Daithankar
and ors. …. Applicants
v/s.
The New India Assurance Co. Ltd. …. Respondents

Mr. Devendranath Joshi a/w. Mr. Pradyumn Thakurdesai
for the Appellant – Insurance Company.
Mr. Yuvraj Naravankar for the Respondents – original claimants.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2023.

P. C. :-

. The Appellant – Insurance Company has filed this Appeal under section 173 of the Motor Vehicles Act challenging the judgment and award dated 06/08/2016 passed by the Member, Motor Accident

Claims Tribunal, Pune in MACP No.346/2014.

2. Heard learned counsel for the Appellant and learned counsel for the Respondents. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The Respondent Nos.1 to 5 have filed Claim Petition under section 166 of Motor Vehicles Act in view of death of Ravindra Daithankar in a motor vehicular accident on 09/02/2014 involving motor cycle bearing registration No.MH/12/AJ/7236 and Container vehicle bearing registration No.MH/06/AC/0507 which was insured by the Appellant – Insurance Company.

4. It is the case of the claimants that the accident was caused solely due to rash and negligent driving by the driver of the offending vehicle. The claimants have stated that the deceased was 45 years of age and he was working as the Assistant Manager at Bharat Forge Co. Ltd. since 2006 and earning Rs.42,752/- per month. The claimants being the widow, children and parents of the deceased claim that they were solely dependent on the income of the deceased and hence, filed a petition to claim compensation of Rs.80,00,000/-.

5. The Respondent No.2, insured did not contest the proceedings. The Appellant disputed that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Appellant – Insurance Company also disputed the age and income of the deceased and claim that they are not liable to pay compensation as claimed.

6. The Tribunal, after considering the evidence on record, held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The Tribunal held that the deceased was 45 years of age and he was in permanent employment of Bharat Forge Co. Ltd. since 2006 and was drawing salary of Rs.42,752/-. The Tribunal deducted an amount of Rs.200/- paid towards Professional Tax and Conveyance Allowance of Rs.1,150/- and considered the net income of the deceased as Rs.4,80,518/-. The Tribunal added 30% towards Future Prospects and considering the number of dependents, deducted 1/4th towards Personal Expenses of the deceased. Considering the age of the deceased, the Tribunal applied multiplier of 14 and computed Loss of Dependency at Rs.65,59,070/-. The Tribunal awarded compensation of Rs.1,00,000/- towards Loss of Consortium,

Rs.25,000/- towards Funeral Expenses and Rs.1,00,000/- towards loss of love and affection. Thus, the Tribunal awarded total compensation of Rs.67,84,070/- with interest @ 9% p.a. from the date of the petition till final realization. Being aggrieved by the said judgment and order, the Appellant – Insurance Company has filed this Appeal.

7. Mr. Joshi, learned counsel for the Appellant – Insurance Company submits that the claimants have failed to prove that the accident was caused due to rash and negligent driving by the driver of the Container. He further submits that the compensation awarded by the Claims Tribunal, is exorbitant. He also challenged the rate of interest awarded by the Tribunal.

8. Per contra, Mr. Yuvraj Narvankar, learned counsel for the Respondents-claimants submits that the findings recorded by the Tribunal are based on evidence on record. He also states that the compensation awarded by the Tribunal is just and reasonable and does not warrant any interference.

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

10. It is not in dispute that the deceased – Ravindra Daithankar had expired on 09/02/2014 as a result of the injuries sustained in a motor vehicular accident involving Container vehicle bearing registration No.MH/06/AC/0507. The Claimants had placed on record copy of complaint (Exhibit – 22), FIR (Exhibit – 23) and spot panchanama (Exhibit – 24) in C.R.No.29/2014 registered at Jejuri Police Station. A perusal of the said records indicate that the crime was registered against the driver of the offending vehicle for driving the vehicle in a rash and negligent manner and thereby causing death of Ravindra Daithankar. The Appellant – Insurance Company did not examine any witnesses including the driver to rebut the evidence adduced by the Claimants. In the absence of such evidence, the driver of the offending vehicle has been held to be responsible for the accident. The Appellant has failed to make out a case to disturb a finding on the issue of negligence.

11. As regards the quantum of compensation, the evidence on record reveals that the deceased was working as an Assistant Manager at Bharat Forge Co. Ltd. The claimants had examined AW2 – Vijay Yashwat Parkhi. He has placed on record Appointment Letter (Exhibit -

37), Confirmation Letter (Exhibit – 38) and Salary Certificate for the month of September, 2013 till February, 2014. The Tribunal has relied upon the Salary Slip of January, 2014 to compute the loss of dependency. A perusal of the said Salary Certificate at Exhibit – 46 reveals that the gross salary of deceased for the month of January, 2014 was Rs.42,752/- per month. The Salary Slip reveals that an amount of Rs.200/- was deducted towards professional tax and that an amount of Rs.19,210/- was deducted from the annual income of the deceased towards income tax. Furthermore, the salary slip for the month of January, 2014 includes earned leave encashment of Rs.505/- and Picnic Allowance of Rs.901/-. Upon deducting the amount paid towards professional tax, income tax and amount received towards earned leave encashment and picnic and conveyance allowance, the net annual income of the deceased works out to Rs.4,60,742/-. The deceased was a permanent employee and hence, 30% of the total income needs to be added towards future prospects. Furthermore, considering the number of dependents and deducting 1/4th towards personal expenses and applying multiplier of 14, the Loss of Dependency works out to Rs.62,89,136/-. The claimants being widow, children and the parents of the deceased are entitled for compensation of Rs.2,20,000/- towards Loss of Spousal Consortium, Loss of Parental Consortium and Loss of

Filial Consortium and in addition Rs.16,500/- each towards Loss of Love and Affection and Funeral Expenses. The Claimants are therefore entitled for total compensation of Rs.65,42,136/- as against compensation of Rs.67,84,070/- awarded by the Tribunal. The judgment and award needs to be modified to that extent.

12. Hence, the Appeal is partly allowed. It is held that the Claimants are entitled for compensation of Rs.65,42,136/- with interest @ 9% p.a. from the date of the petition till final realization. Statutory deposit, if any, be transferred to the Claims Tribunal. The Tribunal shall pay to the Claimants the compensation of Rs.65,42,136/- with interest and refund the balance amount to the Insurance Company with proportionate interest accrued thereon.

13. Appeal as well as Civil/Interim Applications stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)