IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 150 of 2023

Reliance General Insurance Company)
Limited, 570, Rectifier House)
Naigaum Cross Road, Wadala -West)(Original Opponent
Mumbai – 400 031.) No.5)
….Appellant

Versus

1. Rekha Ramdas Gorad)
Age : 24 years,)
Occupation : Household)(Original Applicant No.1)

2. Mayuresh Ramdas Gorad)
Age : 3 years, Occupation : Nil)(Original Applicant No.2)

3. Prathamesh Ramdas Gorad)
Age : 5 months, Occupation Nil)
Applicant Nos.2 and 3 minor through)(Original Applicant No.1)
Their legal and natural guardian -)
mother Applicant No.1 Smt. Rekha)
Ramdas Gorad, All R/at Survey No.5)
Vetalbaba Vasahat Lane No.1,)
Hadaspsar, Pune – 28.)

4. Deleted as per Registrar's order)

SHUBHADA SHANKAR KADAM Digitally signed by SHUBHADA SHANKAR KADAM Date: 2023.03.01 19:02:53 +0530

5. Nilesh Ashok Kalbhor)
Age Adult, Occupation : Business)
R/at. Loni Kalbhor, Tal.Haveli)
Dist. Pune.)(Original Opponent No.1)
….Respondents

WITH
CROSS OBJECTION STAMP NO. 3169 OF 2023
IN
FIRST APPEAL NO. 150 of 2023

Reliance General Insurance Company)
Limited, 46 Shrinath Plaza,)
Second floor, 1184/4 F.C.Road,)
Near Dnyaneshwar, Paduka Chowk)
Pune 5.) ….Appellant

Versus

1. Rekha Ramdas Gorad)
Age : 24 years,)
Occupation : Household)

2. Mayuresh Ramdas Gorad)
Age : 3 years, Occupation : Nil)

3. Prathamesh Ramdas Gorad)
Age : 5 months, Occupation Nil)
Applicant Nos.2 and 3 minor through)
their legal and natural guardian -)

mother Applicant No.1 Smt. Rekha)
Ramdas Gorad, All R/at Survey No.5)
Vetalbaba Vasahat Lane No.1,)
Hadaspsar, Pune – 28.)

4. Ambar Siddheshwar Pandagale)
age 23 years, Occupation Driver)
R/at Taljaimata Vasahat,)
Padmavati, Pune 411009.)

5. Nilesh Ashok Kalbhor)
Age Adult, Occupation : Business)
R/at. Loni Kalbhor, Tal.Haveli)
Dist. Pune.) ….Respondents

(Respondent Nos.1 to 3 are original claimants)

Mr. Rahul Mehta i/b. KMC Legal Venture,, Advocates for the Appellant.
Mr. Yogesh Pande, Advocate for the Respondent Nos. 1 to 3.
Mr. Sachin S Punde, Advocate for Respondent No.5.

CORAM : S. G. DIGE, J.

DATE : 23rd FEBRUARY 2023.

Judgment :

1. This appeal is preferred by the appellant-Insurance Company against the judgment and order passed by Motor Accident

Claims Tribunal, Pune (for short "the Tribunal"). The claimants have also filed cross objection for enhancement of compensation, which is on stamp number.

2. It is contention of learned counsel for the appellant that the cheque which was issued by respondent No.5-owner of the offending vehicle was dishonoured. The intimation was given to respondent No.5 (owner of offending vehicle) about the dishonour of the cheque and the intimation was also given to the Regional Transport Office. The evidence was led before the Tribunal regarding intimation given to respondent No.5 and Regional Transport Office about the dishonour of the cheque and cancellation of policy but the Tribunal has not considered the evidence led by the appellant. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent Nos.1 to 3/claimants that no notice was given to the owner of the offending vehicle, no intimation was given to the Regional Transport Office regarding dishonour of the cheque. The Tribunal has considered all the aspects and has passed the order of pay and recover, which is proper.

4. Learned counsel for respondent No.5 submits that appropriate order be passed.

5. I have heard all learned counsel, perused the judgment and order passed by the Tribunal.

6. It is the contention of learned counsel for the appellant that the cheque by which premium of insurance policy was paid was dishonoured and intimation was given to respondent No.5 and Regional Transport Office. To prove the defense taken by the appellant-Insurance Company, they examined their officer - Vishal Bansal at Exhibit "29". This witness has stated that the original copy of the cheque is at Exhibit "33" and cheque returned memo is at Exhibit "34". The Under Posting certificate is at Exhibit "35". This witness has further stated that the opponent No.2 in the claim petition was the owner of the offending jeep. He had given the cheque of Rs.23,800/- as premium of insurance policy. The appellant - Insurance Company deposited the said cheque in the bank but it came to be dishonoured. In cross-examination, this witness admitted that the Under Posting Certificate at Exhibit "35" does not bear the complete address of the insured i.e. the owner of

the offending jeep. This witness further admitted that the Insurance Company has not filed postal receipt and acknowledgment before the Tribunal. He further admitted that the postal receipt and acknowledgment was also not found in their office and the Insurance Company is having no documents to show that the intimation letter of the cancellation of the insurance policy was served to the insured or not. This witness further admitted that he does not have an idea whether his office intimated the Regional Transport Office that the insurance policy of the insured is cancelled. On the basis of the admissions given by this witness in the cross-examination, the Tribunal has held that the appellant - Insurance Company cannot be escaped from its responsibility of payment of compensation. At the most, the Insurance Company can recover the said compensation from the insured. As it is settled principle of law that in case of dishonour of cheque of premium of policy, the Insurance Company has to send a letter to the insured about the dishonour of cheque and cancellation of policy and the intimation about the cancellation of policy shall be given to the Regional Transport Office. But from the evidence of the witness examined by the appellant- Insurance Company, it reveals that no such formality was completed. I do not find any infirmity in the observation of the Tribunal. Moreover, the

Tribunal has already passed pay and recover order, which is proper.

7. The claimants have filed cross-examination for enhancement of compensation on the ground that future prospects and consortium amount are not awarded. It is the contention of the learned counsel for the appellant - Insurance Company that the Tribunal has awarded just and proper compensation, hence, no enhancement is required. In my view, as per Section 168 of Motor Vehicles Act, the claimants are entitled for just and fair compensation. The Tribunal has not awarded future prospects. The claimants are entitled for future prospects as per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC).*** The claimants are also entitled for consortium amount as per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC).*** The Tribunal has considered the monthly income of the deceased at Rs.4,500/-. I am considering the same monthly income. 1/3rd deduction for personal expenses comes to Rs.1500/-. 40% future prospects comes to Rs.1200/-. Thus, total income comes to Rs.4200/- per month and Rs.50,400/- per annum (Rs.4200 multiplied by 12). The deceased was 30 year old, the

proper multiplier is 17, if Rs.50,400/- is multiplied by 17, it comes to Rs.8,56,800/-. Each claimant is entitled for consortium amount of Rs.40,000/-, there are 3 claimants, the consortium comes to Rs.1,20,000/-. The amount for funeral expenses and loss of love comes to Rs.30,000/-. The total compensation comes to Rs.10,06,800/-. The compensation awarded by the Tribunal is Rs.6,42,000/-. Thus, an amount of Rs.3,64,800/- is the enhanced amount of compensation.

8. In view of the above, the claimants are entitled for an amount of Rs.3,64,800/- and I pass following order :

1. The appeal is dismissed. No order as to cost.

2. The cross objection is allowed.

3. The claimants are entitled for enhanced compensation of Rs.3,64,800/- @ 7.5% per annum from the date of filing of claim petition till its realisation. Out of this amount, the amount of Rs.1,50,000/- is for consortium and loss of estate and funeral expenses, the claimants are entitled

interest @ Rs.7.5% on this amount from 1st October 2017 till realisation of the amount.

4. The Insurance Company is directed to deposit the enhanced amount along with interest accrued thereon within six weeks from receipt of the order

5. The claimants are permitted to withdraw the deposited amount along with interest accrued thereon.

6. The statutory amount be transmitted to the Motor Accident Claims Tribunal, Pune. The parties are at liberty to withdraw it.

9. The delay for filing the cross objection is condoned. The cross objection be registered for statistical purpose.

10. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)