IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.148 OF 2018
WITH
CROSS OBJECTION (ST) NO.633 OF 2023

Reliance General Insurance Co. Ltd }
Thr. Its Corporate Office, }
4th Floor, Chintamani Avenue, }
Off Western Express Highway, }
Goregaon-East, Mumbai } **...Appellant**

Versus

1. Sunil Rupchand Adagale }
2. Nirmala Sunil Adagale }
}
Both R/at Sr.No.247/2/3, Sadafully }
Park , D.P. Road, Aundh, }
Pune-411 007 }

3. Pramod Babanrao Kanade }
Kalamb, District-410 515 } **...Respondents**

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Mr.Yogesh Pande, for Respondent Nos.1 and 2.

CORAM : S.G. DIGE, J.

DATE : 10 MARCH 2023

JUDGMENT :-

. The issue's involved in this Appeals are pay and recovery order passed by the Tribunal and income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant that at the time of the accident driver of offending vehicle was not holding effective and valid license. There was breach of Terms and Conditions of the Insurance Policy. When there was breach of Terms and Conditions of Insurance Policy there was no liability of Insurance Company to pay the compensation. The Tribunal has not considered this fact and has passed pay and recovery order, which is not proper.

3. The learned counsel further submit that the deceased was final year Engineering student. The Tribunal has considered Rs.18,000/- per month as notional monthly income of deceased, which is on higher side and on that basis exorbitant and excessive compensation is awarded. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Claimant that it is settled position of law that in case of breach of Terms and Condition of the Insurance Policy pay and recovery order is proper, there is no infirmity in it. There was contractual liability between Insurance Company and owner of the vehicle. So Insurance Company has to pay compensation first and recover it from the owner of the vehicle.

5. The learned counsel further submits that the Tribunal has rightly considered the monthly income of deceased at Rs.18,000/- as deceased was final year Mechanical Engineering

student. The Tribunal has not awarded future prospects. The Claimants have filed Cross-Objection. Hence, future prospects be awarded.

6. The learned counsel for the Appellant submits that as deceased was not in permanent service, hence 50% future prospects cannot be awarded,it should be 40%. The learned counsel further submits that there is delay of four years for filing the Cross-Objection.

7. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'the Tribunal').

8. In respect of issue of breach of Terms and conditions of the Insurance Policy, admittedly, at the time of the accident the driver of the offending vehicle was not holding valid and effective driving license. The Tribunal has passed pay and recover order. I do not find any infirmity in it. As it is settled principle of law that when there is breach of Terms and Conditions of Insurance Company. The insurer has to pay compensation to the Claimants and recover it from the owner of the offending vehicle.

9. In respect of income of deceased, the deceased was student of final year Mechanical Engineering. The Tribunal has considered his notional monthly income at Rs.18,000/- per

month. I do not find any infirmity in it, as deceased was the final year Mechanical Engineering student. The Tribunal has not awarded future prospects to the deceased. The Tribunal has considered notional income of deceased and as he was not in permanent service. Hence Claimants are entitled for 40% future prospects.

10. At this stage, the learned counsel for the Appellant submits that if this Court is considering 40% future prospects, interest may not be given as there is 4 years delay for filing Cross objection.

11. The learned counsel for the Claimant agrees for it. The 40% amount on notional income of Rs.19,44,000/- comes to Rs.7,77,600/-. In view of above, I pass following order.

ORDER

(i) The Appeal is dismissed. No order as to costs.

(ii) The Cross objection is allowed.

(iii) The Claimants are entitled for enhanced amount of Rs.7,77,600/-.

(iv) The Appellant is directed to deposit enhanced amount within six weeks, after receipt of the order.

(v) The Claimants are permitted to withdraw entire award amount along with accrued interest thereon and enhanced amount.

(vi) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it, as per Rule.

(vii) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)