**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**FIRST APPEAL NO.3178 OF 2015**

ICICI Lombard General Insurance
Company Ltd.
Through its Legal Officer,
Mr. Rahul Raosaheb Sanap
Age: 32 years, Occ. Service,
R/o: c/o ICICI Lombard General
Insurance Company Ltd. Alaknanda,
Ist Floor, Adalat road, Aurangabad. ..Appellant

Versus

1. Shobha w/o Laxmikant Dabhade,
Age: 52 years, Occu: Household,
R/o Deepnagar, Nanded. Dist. Nanded

2. Mayur s/o Laxmikant Dabhade,
Age: 28 years, Occu: Nil,
R/o Deepnagar, Nanded. Dist. Nanded

3. Rajeshree W/o Nilesh Ghodke,
Age: 31 years, Occu: House Hold,
R/o satpur, Nashik. Dist. Nashik
[resp no 1 to 3 org claimants ]

4. Inderjeetsingh Ramsingh Bungai
Age: 58 years, Occ: Business,
R/o Gurudwara Gate no. 2, Nanded,
Dist. Nanded. ..Respondents

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Mr. S. S. Patil, Advocate for the Appellant.
Ms. Shobha L. Dabhade h/f Mr. G. P. Shinde, Advocate for Respondent Nos.1 to 3.

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**CORAM : S. G. CHAPALGAONKAR, J.**

**DATED : 18th APRIL, 2024.**

**<u>JUDGMENT:-</u>**

1. The appellant/original respondent no.2-Insurer approaches this Court under Section 173 of the Motor Vehicle Act, assailing judgment and award dated 16.10.2014, passed by the Motor Accident Claim Tribunal, Nanded, in M.A.C.P. No.16/2008, by which the Tribunal directed original respondent nos.1 and 2 to jointly and severely pay the compensation of Rs.9,50,000/- to the claimants under Section 166 of the Motor Vehicle Act.

2. With the consent of the parties, matter is taken up for final hearing.

3. Mr. Patil, learned Advocate appearing for the appellant-Insurer submits that the Tribunal has passed the excessive and exorbitant award. The notional income of the deceased is erroneously assumed @ Rs.7500/- per month. Although the business run by the deceased was subsequently taken over by claimants and they continued to derive benefit out of the said business, Tribunal erroneously assumed loss of future earning. In fact, at the most loss of supervision of the business ought to have been the basis to determine compensation. He would further submit that as per the postmortem report, the age of the deceased is 55 years, however, the Tribunal applied multiplier assuming age of 48 years. He would submit that claimant nos.2 and 3 were not dependent on the income of the deceased but Tribunal considered dependency of all three claimants. He would further submit that involvement of the vehicle itself is doubtful. Initially, FIR was lodged against the unknown vehicle. Subsequently, the insured vehicle is falsely implicated as an offending vehicle.

4. The learned Advocate appearing for the respondent nos.1 to 3-original claimants supports the award. He would submit that the deceased was running Jewellery shop. He used to pay Income Tax. The copies of the Income Tax Returns are placed on record of the Tribunal that formed basis for computation of the income. Although, the similar business has been continued by the son of the deceased, that itself would not constitute ground to deny loss of dependency to claimants. Although, FIR was lodged against the unknown vehicle, police papers admitted in evidence clearly depicts that the accident occurred due to involvement of the insured vehicle. During the course of investigation, the vehicle number has been traced out and the driver of the said vehicle has been prosecuted. No contra evidence is brought on record on behalf of the Insurance Company to dislodge the contents in the police papers.

5. Having considered submissions advanced by the learned Advocate appearing for the respective parties and after going through the pleadings and evidence as tendered before the Tribunal, it is apparent that the accident in question took place on 28.10.2007 at about 09.30 am. The deceased while riding his scooter was dashed by the Tipper. He had sustained multiple injuries. On admission to Government Hospital, Nanded, he was declared as dead. Initially Crime No.252/2007 was registered against unknown vehicle at Vazirabad Police Station. Immediately, after registration of offense, police machinery mobilized and offending vehicle was traced out, so also the driver was arrested. *Prima facie*, such evidence is sufficient to establish involvement of the insured vehicle. Pertinently Insurance Company failed in efforts to dislodge the contents of charge-sheet. Even, insurer failed to take specific defence of non-involvement of

the insured vehicle in written statement and merely relying upon the acquittal of the driver, the case of non-involvement is sought to be developed. The driver did not enter in witness box before Tribunal, therefore, finding recorded by the Tribunal on the point of involvement of the vehicle relying on police papers calls no interference in appellate power of this court. It is trite that acquittal of driver in criminal case cannot be sole ground to reject claim for compensation lodged under provision of Motor Vehicle Act. The claim for compensation needs to be decided on principles of preponderance of possibility, unlike criminal case requiring proof beyond doubt. Hence, this Court is not inclined to accept the contentions raised on behalf of appellant.

6. The second limb of argument advanced on behalf the appellant is as regards to the fixation of the quantum of compensation. The claimants case is that the deceased was running his Jewellery shop. They placed on record the copies of the his Income Tax Returns for the year 2004-2005 and 2005-2006. However, no document regarding his actual income for the year 2006-2007 or a year before his death is brought on record. The fact remains that the deceased was in a business and assessed to Income Tax till the Financial Year 2005-2006. As per his last returns for the Financial Year 2005-2006, net profit from business is shown as Rs.1,40,950/-. However, in absence of the Income Tax Returns for the Financial Year 2006-2007, the Tribunal presumed his income @ Rs.7500/- per month. This court finds that such loss can be presumed to claimants towards able supervision of business by deceased. The quantification of compensation is based on sufficient material on record. Hence, no fault can be found in the conclusion drawn by the Tribunal. Even compensation determined for non pecuniary heads appears to be just and proper and no

ground is made out to interfere in the award as passed by the Tribunal.

7. Hence, the Appeal sans merit and accordingly dismissed.

8. The amount, if any, deposited by the appellant be disbursed to the claimants.

**(S. G. CHAPALGAONKAR)**
**JUDGE**

Devendra/April-2024