IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 336 OF 2022

IFFCO-TOKIO General Insurance Co. Ltd.)
Through its Authorized Representative)
Mr. Saaju Anthony)
9th Sunit Capital, Above Mahalaxmi Authomotives,)
Vetalbaba Chowk, SB Road, Pune – 16)

Also at)
3rd Floor, Iffco Bhavan, 181, Waterfield Road)
Next to jammu & Kashmir Bank,)
Bandra (West), Mumbai 400 050) ….Appellant
(Orig. Opp. Party No.2)

Versus

1. Vijaya Nandkumar Budhe,)
Age: 28 years, Occ: Household)

2. Nikhil Nandkumar Budhe)
Age: 9 years, Occ: Education)

3. Sahil nandkumar Budhe,)
Age: 7 years, Occ: Education)

(Respondent No.1 for herself and for)
Respondent Nos.2 and 3 as a guardian))

Nos. 1 to 3 resident of Deshmukhnagar,)
Near M.I.D.C. Police Station.)

4. Pandurang Anna Budhe,)
Age: 70 years, Occ: Nil)

5. Savitra Pandurang Budhe,)
Age: 65 years, Occ: Nil)

Nos. 4 and 5 resident of Ambavade,)
Taluka Khatav, District Satara)

6. Bharat Bapurao Khedkar)
Age 50 years, Occ: Transport.)

Resident of Shivneri Housing)
Society, Plot No. 127/8, Room Nos.08)
Sector No. 16A, Neral New Mumbai)....Respondents

(Present Respondent Nos. 1 to 5 being original Applicant and Respondent No. 6 being original Opp. No.1)

Mr. Rajesh Kanojia a/w Ms. Drishti Tejani, Advocate for the Appellant.
Mr. Kunal Patel i/b R. V. Sankpal & Associates, Advocate for the Respondent Nos. 1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are fake licence and income of deceased is considered on higher side.

2. It is contention of learned counsel for the Appellant that, the Tribunal has considered income of deceased at Rs.1,00,000/- per annum. The Tribunal should have considered managerial loss instead of considering yearly income of deceased. Learned counsel further

submitted that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence and he had produced fake driving licence before the Tribunal. The information was sought under Right to Information Act, about issuance of driving licence, which shows it was fake driving licence but, this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that no witness was examined by the Appellant-Insurance Company to prove that the licence produced by the driver of offending vehicle was fake. Learned counsel further submitted that deceased was doing milk business as well as he had agricultural land. He was doing the business of sitting sheep and goats in the field of farmers for manuare purpose and he used to earn income from it. The monthly income of deceased was around Rs.24,000/- per month but, the Tribunal has considered his annual income at Rs.1,00,000/-, which is on lower side. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short “the Tribunal”).

5. While dealing with the issue of fake driving licence. The Tribunal has observed that police station had issued certified copy of the licence procured under Section 158 of the Motor Vehicle Act, it is at Exhibit-58. The writing on the licence appears to be ambiguous whether, it is 6191/BST/08 or 6/91/BST/08. The Police Station has submitted its report at Exhibit-59 under Rule 254 (8 & 9) of the Motor Vehicle Rules 1989, wherein it has mentioned the licence No. 6/91/BST/08. Considering the said facts vide order on the application of Respondent No.2/Appellant (Exhibit-82) opportunity was given to Respondent No.2/Appellant, herein to call and examine the Licensing Authority. Accordingly witness summons was issued. However, in spite of giving sufficient opportunity to the Respondent No.2, could not procure presence and examine the witness from Licensing Authority. The Respondent No.2 could not examine either driver or owner of the container to establish the said fact. It has also not adduced any other convincing evidence so as to discard the driving licence on record. In such circumstances, mere letter issued under the Right to Information Act itself is not sufficient to discard the driving licence of the driver filed on record. The Tribunal has relied on the Judgment of this Court in ***Smt. Bharti w/o Rameshlal***

Bajaj & Ors. Vs. Mr. Sultan Singh Aparsingh & Anr. 2021(3) All MR 177. I do not find infirmity in the observations of the Tribunal. In my view, when the Appellant has taken specific defense that the licence produced by the driver of offending vehicle was fake licence, it was burden on them. To prove the said fact by producing evidence letter issued under RTI shows that, it was given to advocate and no name of the person who was holding the licence is mentioned in the said letter. In the said letter only driving licence No. 6191/BST/08 is mentioned. As observed earlier the Appellant failed to prove that driving licence was fake. Hence, I do not see merit in the contention that driving licence was fake.

6. In respect of income of the deceased. It is claimant's case that deceased was cultivating agricultural land and used to earn Rs. 1,08,000/- per annum. By selling milk of his cattle, he used to earn Rs.5,000/- per month. The deceased had also maintained sheep and goats and used to earn Rs.10,000/- per month therefrom. Accordingly his monthly income was Rs.24,000/- per month.

7. While dealing with issue of income of the deceased, the Tribunal has observed that 7/12 extract filed on record discloses that 30 Gunthas land was standing in the name of deceased and 52

Gunthas land was standing in the name of his father. To prove the income of deceased, the claimants have examined PW-2 Dattatray Appa Khilare, he has stated that deceased used to cultivate his land. It has come in the evidence of PW-4 Hindurao Tatyaba Barkade that after the death of the deceased, he has purchased buffalo from the claimants for Rs.40,000/-. It has come in the evidence of PW-6 Hanmant Pandurang Deshmukh that the deceased used to sit his sheep and goats in his land for the purpose of manure and he used to pay him Rs.500/- per day for the same. It has come in the evidence of PW-5 Kisan Ramchandra Kolekar that after the death of Nandkumar, he has purchased his 40 sheep and 10 goats for Rs.3,50,000/-. It has come in the evidence of PW-3 Laxman Kisan Kumbhar that he would collect and sent milk to Shivshambho Dairy, Gursale and the deceased used to provide him milk and he used to pay him near about Rs.1600/- to Rs.2000/- per day.

8. Considering the evidence on record, the Tribunal has considered notional annual income of deceased at Rs.1,00,000/- per annum. I do not find infirmity in it.

9. It is contention of learned counsel for the Appellant that the Tribunal should have considered managerial loss. In my view, it

has come on record that deceased was used to do multiple business and his milk business was closed after his death, as buffalo, sheep and goats have been sold by the claimants. So, the income from buffalo, sheep and goat are not continued. Hence, It is not necessary to consider it as the managerial loss and the income considered by the Tribunal is proper.

10. In view of above, I pass following order.

ORDER

i. Appeal is dismissed. No order as to costs.

ii. The Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

11. All pending applications stand disposed of.

(SHIVKUMAR DIGE, J.)