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

FIRST APPEAL NO. 1236 OF 2023

HDFC ERGO General Insurance Co. Ltd.)
6th Floor, Leela Business Park,)
Andheri Kurla Road, Andheri (E),)
Mumbai 400 059.)….Appellant
(Orig. Res. No.2)

Versus

1. Jamir Amiruddin Sarkhot)
   Age: 35 Years, Occ: Carpenter Centring)
2. Mahek Jamir Sarkhot)
   Age: 2 Years, Occ: No Work.)
3. Jaid Jamir Sarkhot)
   Age: 1 Years, Occ: No Work.)
   Respondents Nos.2 & 3 being minors)
   Through their natural guardian father)
   Respondent No.1.)
   All R/at. Aarathi, Po.)
   Tal – Shrivardhan, Dist: Raigad.)

4. Laxman Gopal Malpote)

Age – Adult, Occ: Business,)
R/at. Khamboli, Katkar Khandak,)
Tal: Mulshi, Dist: Pune.)….Respondents

(Res. Nos.1 to 3 are Orig. Claimants & Res. No.4 is Orig. Respondent No.1)

Mr. Abhijit Purushottam Kulkarni a/w Ms. Sweta Shah, Advocate for the Appellant.
Ms. Shruti Tulpule i/b Ms. Shirani Samel, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th APRIL, 2024.

Oral Judgment. :

1. The issue involved in this appeal is dishonor of the cheque, which was given as a premium of policy.

2. It is contention of learned counsel for the Appellant/Insurance Company that the owner of the offending vehicle had given a cheque as a premium of insurance policy, which was dishonored. The notices were given to owner of the vehicle and R.T.O. Office about the cancellation of policy. The witness was examined to prove the said facts but the Tribunal has not considered this fact and has passed pay and recover order, which is erroneous.

Learned counsel further submitted that at the time of accident deceased was 32 years old but the Tribunal has applied multiplier of 17, it should be 16. Learned counsel further submitted that the Tribunal has awarded Rs.2,00,000/- for funeral expenses, it is on higher side.

3. It is contention of learned counsel for the Respondents/Claimants that the acknowledgment receipts about the notices received by the owner of the vehicle and R.T.O. Office were not produced on record. The Appellant failed to prove that notices were received by owner of the vehicle and R.T.O. Office, on that ground pay and recover order is passed by the Tribunal, which is proper and no interference is required in it. Learned counsel further submitted that deceased was permanent Government Employee but the Tribunal has awarded 40% future prospects, it should be 50%.

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

5. While passing the pay and recover order, the Tribunal has observed that though the insurance company has examined the witness to prove that notices were sent to the owner of the offending

vehicle and R.T.O. Office but acknowledgment receipts of the said notices were not produced on record. The Insurance Company has not proved that the notices about cancellation of policy were received by owner of the vehicle and R.T.O. Office, on that ground the Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, if Insurance Company has taken the defense about the issuance of the notice to the owner of the vehicle and R.T.O. Office, they must produce acknowledgment receipt of owner of vehicle and R.T.O. Office. Unless intimation is given to the owner of vehicle about the cancellation of policy, it cannot be considered that policy was cancelled. Hence, I do not see merit in the contention that pay and recover order passed by the Tribunal is erroneous.

6. It is contention of learned counsel for the Appellant that wrong multiplier is applied and compensation awarded under head of funeral expenses is on higher side. The deceased was the Government Employee. The Tribunal should have awarded 50% future prospects but the Tribunal has awarded 40% future prospects. The multiplier applied by the Tribunal is wrong multiplier and excess amount awarded under the heads of funeral expenses can be matched in the 10% less future prospects amount.

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

ORDER

i. Appeal is dismissed.

ii. The 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.

iv. The Appellant/Insurance Company is at liberty to recover the compensation amount along with interest from the owner of the offending vehicle as fixed by the Tribunal.

8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)