SHUBHADA SHANKAR KADAM Digitally signed by SHUBHADA SHANKAR KADAM Date: 2024.04.24 10:12:59 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.894 OF 2016
with
CROSS OBJECTION STAMP NO. 18394 OF 2019

	The New India Assurance Co.Ltd., Alibaug Branch, Taluka Alibaug, District-Raigad	…	Appellants
	Versus		
1	Suryakant Haribhau Nalavade, Age-57 years, Occupation-Service.		
2	Jayshree Suryakant Nalavade, Age – 52 years, Occu. Housewife.		
3	Bhagyashree Prashant Nalavade Age-25 years, Occu-Housewife.		
4	Yash Prashant Nalawade, Age – 3 years (Applicant No.4 is minor, through his natural guardian and next friend mother Applicant No.3) All R/o. 204, Sukhshanti Prerana, Tisgaon Pada, Poona Link Road, Kalyan (East), Thane -421 306.		
5	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	….	Respondents

with
FIRST APPEAL NO.729 OF 2016

	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	…	Appellant
	Versus		
1	Sunaina Ramsoch Vishwakarma, Age-51 years, Occupation-Household.		
2	Jitendra Ramsoch Vishwakarma, Age – 34 years, Occu. Service.		
3	Virendra Ramsoch Vishwakarma, Age – 31 years, Occu. Service.		
4	Pankaj Ramsoch Vishwakarma,		

	Age – 27years, Occu. Service. All residents of 644, Near Jain Mandir, Grocery Shop of Utter, Ghodbunder Road, Thane – 421 306.		
5	The New India Assurance Co.Ltd., Branch Office at Alibaug, Taluka Alibaug, District-Raigad	….	Respondents

with
FIRST APPEAL NO.1172 OF 2016

	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	…	Appellant
	Versus		
1	Suryakant Haribhau Nalavade, Age-64 years, Occupation-Service.		
2	Jayshree Suryakant Nalavade, Age – 59 years, Occu. Housewife.		
3	Bhagyashree Prashant Nalavade Age-34 years, Occu-Household.		
4	Yash Prashant Nalawade, Age – 10 years All residents of 204, Sukhshanti Prerna, Teesgaon Pada, Pune Link Road, Kalyan (East), Thane -421 306.		
5	The New India Assurance Co.Ltd., Branch Office at Alibaug, Taluka Alibaug, District-Raigad.	….	Respondents

with
FIRST APPEAL NO.1171 OF 2016

	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	…	Appellant
	Versus		
1	Amit Shantilal Kamble, Age 34 years, Occu : Business, A-203, Pruthvi Park Building, Plot No.345,		

	Sector 30-A, Near Datta Mandir, Near Skoda Showroom, Sanpada Station, Vashi, Navi Mumbai.		
2	The New India Assurance Co.Ltd., Branch Office at Alibaug, Taluka Alibaug, District-Raigad	….	Respondents

with
FIRST APPEAL NO.387 OF 2016

	The New India Assurance Co.Ltd., Alibaug Branch, Taluka Alibaug, District-Raigad	…	Appellants
	Versus		
1	Sunaina Ramsoch Vishwakarma, Age-45 years, Occupation-Housewife.		
2	Jitendra Ramsoch Vishwakarma, Age – 28 years, Occu. Service.		
3	Virendra Ramsoch Vishwakarma, Age – 25years, Occu. Service.		
4	Pankaj Ramsoch Vishwakarma, Age – 21 years, Occu. Service. All residents of 644, Near Jain Mandir, Uttaranch Kirana Stores, Ghodbunder Road, Thane – 421 306.		
5	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	….	Respondents

with
FIRST APPEAL NO.390 OF 2016

	The New India Assurance Co.Ltd., Alibaug Branch, Taluka Alibaug, District-Raigad	…	Appellant
	Versus		
1	Amit Shantilal Kamble, Age 34 years, Occu : Business, A-203, Pruthvi Park Building, Plot No.345,		

	Sector 30-A, Near Datta Mandir, Near Skoda Showroom, Sanpada Station, Vashi, Navi Mumbai.		
2	Central Bank of India, Zonal Office, 317, M. G. Road, Pune.	….	Respondents

Mr. D.R. Mahadik along with Ms. Pooja Yadav, Advocate for the Appellant in First Appeal No.894 of 2016, Cross Objection Stamp No.18394 of 2019, First Appeal No.387 of 2016, First Appeal No.390 of 2016 and for Respondent No.5 in First Appeal No.729 of 2016, for Respondent No.2 in First Appeal No.1171 of 2016 and for Respondent No.5 in First Appeal No.1172 of 2016.

Mr. T. J. Mendon, Advocate for the Respondent No.1 to 4 in First Appeal No.894 of 2016 and Cross Objection Stamp No.18394 of 2019, Respondent No.1 to 4 in First Appeal Nos.387 and 729 of 2016 and for Respondent No.1 in First Appeal No.390 of 2016.

Mr. I. M. Khardi, Advocate for the Appellant in First Appeal Nos, 729, 1171 and 1172 of 2016 and for Respondent No.5 in First Appeal No.894 of 2016 and Cross Objection Stamp No.18394 of 2019 and First Appeal No.387 of 2016 and for Respondent No.2 in First Appeal No.390 of 2016.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st APRIL, 2024.

Oral Judgment:

1. First Appeal Nos.894, 387 and 390 of 2016 are preferred by the Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Raigad-Alibag (for short “the Tribunal”).

Respondent No.5/Central Bank of India (“the Bank”) has also filed three cross appeals (First Appeal Nos.729, 1171 and 1172 of 2016) against the same judgment and order.

The claimants have also filed cross objection for enhancement of compensation in Appeal No.894 of 2016.

As all these appeals, cross appeals and cross objection are against the same judgment and order, I am deciding all these proceedings by this common judgment.

2. It is contention of of learned counsel for the Insurance Company that at the time of accident the deceased Prashant Nalavade along with three victims were travelling from Mumbai to Pune in Ambassador Car No. MH-12-BV-1976. The original Respondent No.5/Central Bank of India was owner of the said car. The car was given to Mr. Padmanabhan, Deputy General Manager, Central Bank of India, Pune Zone. On 25th April, 2008 Mr. Padmanabhan came to Mumbai to go to Kolkata. The driver dropped Mr. Padmanabhan at Airport and while returning to Pune, he took four persons in the said car. While enroute to Pune, the tyre of the said car burst and the car gave dash to the wall of the tunnel. Due to said dash, four persons including driver died in the said accident and one person got injured. Learned counsel further submitted that the occupants of the car who died in the accident were not bank employees. There was breach of terms and conditions of insurance policy as the driver allowed the said persons to travel in the car without any authority. The insurance was only for the bank employees. Learned counsel further submitted that insured vehicle was used for carrying

passengers for hire and reward though vehicle was registered and insured as private vehicle. The deceased were travelling as gratuitous passengers or unauthorized passengers. Gratuitous passengers cannot be treated as third party. Therefore the insurance company is not liable to pay any compensation to the claimants but this fact is not considered by the Tribunal and has fixed liability upon the Insurance Company.

3. It is the contention of learned counsel for Bank that, at the time of the accident, the offending vehicle was insured with the Insurance Company, the premium was paid for the occupants of the car, hence, the Insurance Company is liable to pay compensation but the Tribunal has not considered this fact. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the claimants that appropriate order be passed. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, hence, requested to allow the cross-objection of the claimants.

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

6. The insurance policy at Exhibit-32 which was produced on record shows that the insurance was covered for the occupants of the car and premium was paid for it. It is contention of learned counsel for the Insurance Company that the Bank has admitted in their written statement that the occupants of the car were not their employees. In my view, the

Insurance Company has not examined any witness to prove that the policy was issued to bank employees only. The insurance policy at Exhibit-32 mentions that the policy covered unnamed passengers, it is not mentioned in the said policy that it was only for bank employees. As the insurance was taken for the occupants of the car, though the contract was between the bank and Insurance Company, it cannot be said that the Insurance Company is not liable to pay compensation to the occupants of the car. Though in written statement, the bank has stated that the occupants of the car were not their employees, but to prove this fact, no witness has been examined by the bank, so it has not come on record that the occupants of the car were gratuitous passengers or not. But these facts are not considered by the Tribunal and the Tribunal has fixed joint and several liability on bank and Insurance Company, which is erroneous. As insurance policy covers the passengers of the car, the insurance company has not proved that the policy was only for bank employees, there was no breach terms and condition of insurance policy. Hence, I hold that, the Insurance Company is liable to pay compensation as fixed by the Tribunal.

6.1. It is contention of learned counsel for the claimants in Cross-objection that the Tribunal has considered monthly income of the deceased at Rs.24520/- but while awarding compensation, the Tribunal has not awarded future prospects to the claimants. In my view, as per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd.***

vs. Pranay Sethi , 2017 ACJ 2700(SC), the claimants are entitled for 50% future prospects as deceased was permanent employee.

6.2. The Tribunal has deducted 1/3rd amount for personal expenses, there are four claimants, it should be 1/4th.

6.3 At the time of the accident, the deceased was 29 year old, the Tribunal has applied multiplier of 16, it should be 17.

6.4. In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Monthly income	Rs	24520.00
Less Tax	Rs	520.00
Total	Rs	24000.00
50% future prospects	Rs	12000.00
Total	Rs	36000.00
1/4th Personal Expenses	Rs	9000.00
Total	Rs	27000.00
Rs.27000/- x 12 (months) x 17(multiplier)	Rs	55,08,000.00
Consortium (Rs.48000/- x 4 claimants)	Rs	192000.00
Loss of Estate	Rs	18000.00
Funeral Expenses	Rs	18000.00
Total Compensation.	Rs	**5736000.00**

The Tribunal has awarded Rs.39,28,600/-, if this amount is deducted from the amount of Rs.57,36,000/- considered by this Court, it comes to Rs.18,07,400/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal Nos. 894, 387 and 390 of 2016 are dismissed.
2. The cross appeals (First Appeal Nos.729, 1171 and 1172 of 2016) are allowed to the extent of fastening liability on the insurance company alone.
3. Cross Objection (St.) No.18394 of 2019 is allowed.
4. The Insurance Company shall pay compensation along with interest fixed by Tribunal.
5. The claimants in cross-objection are entitled for enhanced compensation of Rs. 18,07,400/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/- is consortium amount, the claimants are entitled 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
6. The Insurance Company shall deposit the enhanced amount as well as compensation awarded by the Tribunal along with accrued interest thereon within eight weeks from the receipt of this order.
7. The claimants in all appeals are permitted to withdraw the deposited amount along with accrued interest

thereon.

8. The claimants in cross-objection shall pay court fees on enhanced amount as per Rule.

9. The statutory amount in all the First Appeals and Cross Appeals be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)