IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1025 OF 2019
IN
FIRST APPEAL STAMP NO. 3860 OF 2019

ICICI Lombard General Insurance Company Limited … Applicant
Versus
Vijay Deepak Vazirani and Ors. ... Respondents

WITH
INTERIM APPLICATION NO. 9966 OF 2024
IN
FIRST APPEAL STAMP NO. 3860 OF 2019

Vijay Deepak Vazirani and Ors. … Applicant
In the matter between
ICICI Lombard General Insurance Company Limited … Appellant
Versus
Vijay Deepak Vazirani and Ors. ... Respondents

Smt. Varsha Chavan, Advocate for the Applicant in CA/1025/2019.
Mr. S. R. Gupta, Advocate for Applicant in IA/9966/2024.

CORAM : ARUN R. PEDNEKER, J.
DATED : 1st JULY, 2024.

P.C. :

1. Heard learned counsel for the parties.

2. The present appeal is filed by the Insurance Company primarily on the ground that the claimants are not dependent on the deceased. The Tribunal has held this aspect particularly in paragraph No. 18 and 19 of the Judgment dated 31.07.2018 which reads as under :

18. *On the contrary the learned counsel for the claimants contended that all the applicants were depending upon the income of the deceased in one way or the other since all these four brothers had no financial support from their parents or any relatives and all of them were leading life together with the support of one another. Similarly, the original applicant nos.2 and 3 in fact at the time of incident being younger brothers of the deceased were not earning at all and thus they were depending upon the deceased. The learned counsel also submitted that the factor of the dependency must be considered in wider sense. The learned counsel for the claimants relied upon the case of* **Montford Brothers of St. Gabriel and anr. Vs. United India Insurance Co.Ltd. And anr. 2014 ACJ 667(SC); Dr.Gangaraju Sowmini Vs. Alavana Sudhakar Reddy and Anr., 2016 ACJ 1416 (AP); Mohd,Khan and Anr Vs. Bishanchand and Ors., 2016 ACJ 464(Delhi High Court)***; to substantiate his argument.*

19. *In my view the argument of the insurer that the claimants were not dependent upon the income of the deceased is not sustainable for many reasons. The first one is that from the employment contract of the deceased Ex.29, it becomes crystal clear that the deceased was residing at the same address where his three brothers today reside which is mentioned in claim petition. So, it is obvious that all the four brothers were residing together. The claimant no.1 in cross examination stated that he never had been to school and he is a trainer in a Gym. So, it is obvious that an illiterate claimant no.1 somehow managed to earn by building his physique. In cross examination the insurer did not elicit from him the quantum of income he earns. So a person having no educational background and doing a job of trainer in Gym cannot be imagined to maintain his all the three brothers in a city like Mumbai. These probabilities further become strong when the deceased had to opt for job. Similarly, in cross examination it is stated by this witness that the youngest brother Deepesh does nothing and Umesh, the claimant no.2 recently joined the job in same WNS company where the deceased was earning. From these facts it becomes clear that all these four brothers were residing together and they were struggling to earn to maintain their house and out of these four brothers two were non earning members of the family at the time of death of the deceased. Still, the youngest brother Deepesh i.e. claimant no.3 does nothing. For all these reasons, I hold that said admission of the witness that he was maintaining all the brothers was just a stray admission and the overall situation projects the strong probability that this witness and the deceased at the time of incident were trying to maintain the entire family in which there were two non earning younger brothers. Therefore, the argument of the insurer becomes unacceptable and the claimants would be entitled for future loss of income also.*

The Tribunal has particularly considered that the applicant No.1 who was a illiterate person and only a gym instructor cannot alone be maintaining all others.

More particularly when the applicant Nos. 2 and 4 were not earning at the relevant time. The income of the deceased was thus used for maintenance of all.

3. In view of the above, applicants are permitted to withdraw 50% of amount deposited in the Tribunal along with accrued interest thereon till date subject to filing usual undertaking to the satisfaction of the Presiding Officer of the Tribunal.

4. The Interim Application No. 9966 of 2024 is allowed and disposed of.

5. Interim Application No. 1025 of 2019 for condonation of delay of 36 days is allowed and disposed of. The Appeal be registered.

6. The appeal is admitted.

7. Learned counsel for the Insurance Company seeks dispensation of the service on respondent No.4. Service dispensation on respondent No.4 with subject to risk of appellant.

(ARUN R. PEDNEKER, J.)

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