Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 437 OF 2023
WITH
CROSS OBJECTION (ST) NO. 12598 OF 2024
IN
FIRST APPEAL NO. 437 OF 2023

WITH
FIRST APPEAL NO. 390 OF 2024
WITH
CIVIL APPLICATION NO. 3927 OF 2016
IN
FIRST APPEAL NO. 390 OF 2024

The New India Assurance Co. Ltd ...Appellant
Versus
Bechan Prasad Maurya & Ors ...Respondents

Ms Pooja Yadav, i/b DR Mahadik, for the Appellant.
Ms Ketki Gokhale (appeared online), i/b AM Gokhale, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 2ND FEBRUARY 2026

PC:-

1. The New India Assurance Company Limited, original Opponent Nos. 3 and 4 Insurers preferred this Appeal under Section 173 of the Motor Vehicle Act, 1988 against impugned

Judgment and Award dated 17th October 2015 passed in MACP No. 164 of 2004, whereby death claim filed by the Claimants came to be allowed by directing to Respondents Nos. 1, 2 and 4 to jointly and severally pay a sum of Rs. 4,71,000/- with interest at the rate of 7% per annum.

2. The Insurer filed Appeal on the ground that original Opponent No. 4, i.e., Insurer of the the auto rickshaw ought not to have been saddled with the liability of payment of compensation as the Insurance Policy relied upon by the Claimants on the face of it is not a genuine policy. This contention is based upon the alleged fact that the validity of the said policy was shown from 16th January 1996 to 14th January 1997 and ordinarily such policy should have been for a period of one year covering an insured in respect of the said vehicle. It is claimed that since the matter proceeded against this Opponent, prejudice has been caused.

3. Learned counsel for the Appellant submits that the Appellant-Insurer was denied opportunity of hearing before Tribunal and, hence, this is a fit case for causing interference in the impugned Judgment and Award and relegating matter back to the Tribunal for decision afresh. In any case, it is her submission that the initial burden is upon the Claimants to prove the policy covering insured in respect of auto rickshaw and since on the face of it the said policy is not genuine, the the Insurer needs to be absolved from liability of payment of compensation.

4. Learned counsel for original Claimants supports the impugned Judgment and Award in respect of liability of the Opponents to pay compensation jointly and severally. Exception however is taken to the quantum of compensation granted by the Tribunal by preferring cross-objection. It is the contention of the counsel for Claimants that the Tribunal has wrongly accepted the income of the deceased to be Rs. 2,600/- per month and the said income ought to have been taken at Rs. 6,000/- as claimed by the Claimants in view of the fact that the deceased was doing tailoring work. This contention was opposed by the learned counsel for the Insurer.

5. In so far as the service of notice on Insurer/Opponent No. 4 is concerned, record as well as the observations made by the Tribunal in the impugned Judgment and Order indicates that in spite of service of notice Opponent Nos. 1, 2, and 4 failed to cause appearance before the Tribunal and the claim proceeded *ex parte* against them. The Opponent No. 3 Insurer of truck filed written statement at Exhibit-17 denying negligence on the part of the driver of the said vehicle in occurrence of the accident. Defence is also taken in respect of breach of terms of the policy. It is further claimed that the driver of the auto rickshaw has contributed in the occurrence of the accident to major extent.

6. This is not a case wherein Tribunal passed order proceeding *ex parte* against Appellant/Insurer of the auto rickshaw without service of notice. If the Insurer chose not to cause appearance before the Trial in spite of receipt of the notice, the consequence thereof would certainly follow of proceeding *ex parte* against such person. In the facts of the case and also in view of the fact that notice was duly served on the Insurer, there is no justification for setting aside the Judgment and Award and to relegate the matter back to the Tribunal for decision afresh.

7. In absence of appearance of the said Insurer before the Tribunal, neither issue with regard to the genuineness of the policy in respect of auto rickshaw has been raised and obviously the same is not substantiated. This Court therefore finds no reason to accept the contention of the Appellant.

8. Pertinent to note that the deceased was travelling in auto rickshaw along with her husband, i.e. Claimant No. 1. She therefore, cannot be held responsible in any manner whatsoever in the causing of the accident. Pertinently, both vehicles were insured with the Appellant-Insurer, the Tribunal has recorded findings in respect of the liability of payment of compensation by Opponent Nos. 1, 2 and 4. In the facts of the case and on the basis of evidence on record, the said findings are fully justified and hence, appeal of insurer must fail. Insofar as cross-objection for enhancement of the compensation is concerned, the Claimants have made evidence before the Tribunal stating that the deceased was doing tailoring work and was earning Rs. 6,000/- per month. The learned Tribunal, however, accepted the earning of the deceased at the rate of Rs. 2,600/-. The said assessment is not consistent with evidence about the nature of work done by the deceased and, hence, it is on lower side. As such, the Claimants have made out the case for partial enhancement of compensation.

9. The computation of compensation to which claimants are entitled to is as follows: -

Heads	**Amount in Rupees (Rs.)**
Loss of earning capacity dependency per month	6,000/-
Annual income (6000 x 12)	72,000/-
Future Prospects (30%)	21,600/-
Less (-): 1/4th towards personal Expenses	70,200/-
Appropriate Multiplier (15)	10,53,000/-
Loss of consortium	2,40,000/-
Funeral Expenses	15000/-
Loss of Estate	18,000/-
Total compensation	**13,26,000/-**
Less (-): Compensation awarded by tribunal	4,71,000/-
Enhanced compensation	**8,55,000/-**

10. In view of the above, the following order is passed.

ORDER

(a) The Cross-Objection is partly allowed and both Appeals are dismissed.

(b) The claimants are entitled to receive additional compensation of Rs. 8,55,000/- (Rs. Eight Lakhs Fifty Five Thousand only) alongwith interest at the rate of

7% per annum from the date of filing of claim petition till realization of amount.

(c) The appellant is directed to deposit the additional amount along with accrued interest thereon within four weeks from the receipt of this order.

(d) The claimants are permitted to withdraw the deposited amount along with accrued additional interest thereon.

(e) The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(R. M. JOSHI, J.)