

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.191 OF 2016

1. Manisha Wd/o.Namdeo Kharat,
Age 28 years, Occu.Household,
R/o Naregaon, Tq. & District Aurangabad.

2. Om s/o Namdeo Kharat,
Age 6 years, Occu.Minor,
R/o. As above.

3. Sanjana d/o Namdeo Kharat,
Age 3 years, Occu. Minor,
R/o As above.

No.2 and 3 are minors, U/G. of
Appellant No.1 Manisha Wd/o.Namdeo Kharat.

4. Sakhubai W/o. Tukaram Kharat,
Age 58 years, Occu.Household,
R/o. As above.

5. Tukaram s/o. Bala Kharat,
Age 63 years, Occu.Nil,
R/o As above.

...APPELLANTS
(Org.Claimants)

VERSUS

1. United India Insurance Company Limited,
Through its Branch Manager, Aurangabad.

(Copy to be served on Divisional Manager,
Divisional Office, House No.5/5/76,
PB-506, V.P.Chowk, New Osmanpura,
Aurangabad).

2. Habib Khan s/o Bashir Khan,
Age Major, occu. Business,

R/o. Shah Bazaar, Aurangabad.

3. Rohidas s/o Patilba Ushir,
Age : Major, Occu. Driver,
R/o. N-4, Jai Bhavani Nagar,
CIDCO, Aurangabad.

...RESPONDENTS

(Org.Respdt.Nos. 1 to 3)

...

Mr.Deshmukh Mohit R., Advocate for the appellants.

Mr.Bodade S.R., Advocate for respondent no.1.

Mr.P.C.Mayure, Adv., for respondent nos. 2 and 3.

...

CORAM: P.R.BORA, J.

DATE : August 24th, 2016

ORAL JUDGMENT:

1. Heard. Admit. With the consent of the learned Counsel appearing for the parties, heard finally.

2. The appellants have challenged the judgment and order passed by the Member, Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No.551/2013, on 16th September, 2015. The impugned judgment is challenged only on the ground that though the Tribunal did assess the amount of compensation payable to the claimants to the tune of Rs.12,04,200/- (Rs. twelve

lacs, four thousand, two hundred), awarded to the claimants the compensation only of Rs.10,00,000/- (Rs. ten lacs) since in the claim petition the claimants have claimed that much of compensation. Shri Deshmukh, learned Counsel appearing for the appellants, relying on the judgment of the Honourable Apex Court in the case of ***Nagappa Vs.Gurdial Singh (2003 (2) SCC 274)***, submitted that the Tribunal can award compensation more than the amount claimed by the claimants if, according to the Tribunal, the claimants are entitled to such amount. Learned Counsel, therefore, prayed for modification of the award to the aforesaid extent.

3. Shri Bodade, learned Counsel appearing for the respondent no.1 opposed the submissions advanced on behalf of the appellants. Learned Counsel submitted that the compensation awarded by the Tribunal of Rs.10,00,000/- (Rs. ten lacs) is also on higher side and the Tribunal has grossly erred in awarding the said compensation. Learned Counsel submitted that without there being any evidence as about the income of the deceased, the Tribunal has wrongly held the income of the

deceased to the tune of Rs.4000/- and has also further erred in adding 50 per cent of the said income towards future prospects. Learned Counsel further submitted that it was not the case of the claimants that they are unable to pay the Court fees on the amount more than Rs.10,00,000/- (Rs. ten lacs) and hence the claim was restricted to the amount of Rs.10,00,000/-. In such circumstances, according to learned Counsel, no error has been committed by the Tribunal in awarding the compensation of the amount claimed by the claimants. Learned Counsel, therefore, prayed for dismissal of the appeal.

4. On perusal of the impugned judgment and more particularly paragraph Nos.16 and 17 of the said judgment, it is quite clear that the Tribunal has held the appellants / claimants entitled to the total compensation of Rs.12,04,200/- but did not award the said amount and awarded only the amount of Rs.10,00,000/- for the reason that the claimants had filed the claim petition claiming the compensation of Rs.10,00,000/-.

5. The view so taken by the learned Tribunal, apparently, cannot be sustained. Section 168 of the Motor Vehicles Act, 1988, casts a duty on the Tribunal to assess the just and fair amount of compensation payable to the claimants and it, therefore, follows that the Tribunal is not powerless in making an award even in excess of the amount of compensation claimed. As held by the Honourable Apex Court in the case of **Nagappa** (cited supra), under the provisions of the Act, there is no restriction that compensation could be awarded only upto the amount claimed by the claimants. It is further observed that in an appropriate case where, from the evidence brought on record, if the Tribunal considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. In view of the law laid down by the Honourable Apex Court, the learned Tribunal must have awarded the compensation which, according to it, was just compensation payable to the claimants. The award impugned in the present appeal, therefore, needs to be modified to the aforesaid extent.

6. The objections raised by the learned Counsel appearing for respondent no.1 are without any merit. If the respondent no.1 is of the opinion that the Tribunal has erroneously awarded the compensation of Rs.10,00,000/-, it was open for it to challenge the said judgment on the said ground. Admittedly, respondent no.1 has not filed any appeal. Secondly, merely because the claimants have not expressly stated any reason for restricting the claim to the tune of Rs.10,00,000/-, the same cannot be a ground for not awarding the amount more than the said amount if from the evidence on record, the claimants are found entitled to the said amount.

7. For the reasons stated above, the appeal deserves to be allowed. Hence, the following order:

ORDER

1) The appeal is allowed. The appellants / claimants are held entitled for the total compensation of Rs.12,04,200/- (Rs. twelve lacs, four thousand, two hundred only).

2) Respondent nos. 1 to 3 shall jointly and severally pay the enhanced amount of compensation amounting to Rs.2,04,200/- (Rs. two lacs, four thousand, two hundred) to the claimants along with the interest thereon at the rate of 9 per cent per annum from the date of filing of the claim petition till realization of the amount.

3) The enhanced amount of compensation along with the interest accrued thereon shall be paid to appellant No.1 Manisha widow of Namdeo Kharat out of which 50 per cent shall be invested in Fixed Deposit Receipt in any nationalized Bank for a period of three years and balance 50 per cent be paid to her by crossed account payee cheque.

4) Save and except the order as above, the other part of the order passed in MACP No. 551 of 2013 is maintained as it is.

5) The appellants / claimants shall pay the deficit Court fees within six weeks from the date of this order.

- 6) The modified award be prepared after payment of the deficit Court fees.

(P.R.BORA)
JUDGE

...

AGP/191-16fa