

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

**FIRST APPEAL NO.674 OF 2011
WITH
CAF/3859/2010
with
CAF/1778/2017**

Smt.Anandi Vasantrao Kashid & anr. ... Appellants
Vs.
Shri Tanaji Bhagwat Deshmukh & Ors. ... Respondents

**WITH
CAF/1109/2012
IN
FIRST APPEAL NO.674 OF 2011**

Smt.Vaishali Rajendra Shirsat & anr. ... Applicants

IN THE MATTER BETWEEN:

Smt.Anandi Vasantrao Kashid & anr. ... Appellants
Vs.
Shri Tanaji Bhagwat Deshmukh & Ors. ... Respondents

Mr.S.T. Bhosale i/b Dilip Bodake for the Appellants
Mr.R.K. Cheulkar for Respondent No.2
Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde,
Applicants in CAF/1109/2012 – present

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: AUGUST 22, 2017**

P.C. :

1. The First Appeal was admitted on 28.6.2017. As the issue involved herein is short and as the learned Counsel for the

appellants and the respondents and also all the parties are present, by consent, the matter is heard finally.

2. This First Appeal is directed against the judgment and decree dated 8.3.2010 passed by the learned Member, MACT, Satara, in MACP No.150 of 2006. The original applicants are the widow and son of the deceased Vasantrao Kashid and they are also the appellants before this Court. The original opponent No.1 is the owner of the vehicle i.e., a tractor bearing No.MH-13-J-8756. The said tractor was insured with opponent No.2 / insurance Company. Opponent No.3 is Vinaya Vishwas Kashid who is the widow of the son Vishwas Kashid of the deceased Vasantrao Kashid. So, she is the daughter in law and opponent No.4 Shrikant was a minor grandson of Vasantrao. The appellants have claimed compensation of Rs.450,000/- due to the fatal death of Vasantrao, who was 46 years old at the time of the incident, which took place on 27.1.2006 at 10.45am. When the deceased was proceeding by Madha-Kurduwadi road on his motor cycle, a contractor coming in a high and excessive speed, dashed the rear of the motor cycle and thus, the deceased fell down and the wheel of the tractor ran over his chest. He died on the spot and,

therefore, the claim application was filed by his widow and one son. The opponents on service of notice, appeared in the main claim. They filed their defence by filing written statement. The learned Member of the Motor Accident Claims Tribunal, determined the points. The parties tendered their evidence – both oral as well as documentary. After considering the evidence, the learned Judge has allowed the petition partly and directed the opponent Nos.1 and 2 to pay compensation of Rs.4,45,842/- to the applicants alongwith interest @ 7.5% p.a. from the date of presentation of the petition till realisation. In the said order, the learned Judge granted 25% of the amount of compensation to the claimants i.e., the widow and son and granted 75% of the amount of compensation to the opponents grand-daughter in law and grandson.

3. The present appellants i.e., the original claimants, being aggrieved by the said apportionment, filed First Appeal that the appellants ought to have been given 75% of the compensation and opponent Nos.3 and 4 should have been given 25% of the compensation. Thus, in the First Appeal, neither the quantum nor any other order is challenged by either the Insurance company or

by the original claimants but the issue of apportionment of the amount of compensation arose.

4. There were two unfortunate incidents that took place in between after filing of the appeal. Respondent No.3, i.e., the grand daughter-in-law Vinaya Vishwas Kashid died due to terminal illness on 24.5.2016 and the grandson Shrikant died on 9.9.2013 by drowning in a well. Thus, as on today, respondent Nos.3 and 4 are not before the Court. It is informed that respondent Nos.3 & 4 have withdrawn during their lifetime 50% of the amount of compensation and the appellants have withdrawn their share i.e., 25% of the amount of compensation.

5. Mr.Cheulkar, the learned Counsel for the insurance company, has made a statement that the insurance company has deposited the entire decretal amount alongwith interest accrued thereon of Rs.5,07,407/- in the Tribunal. Thus, as on today, only 25% of the amount of compensation with interest is lying in the Court and the applicants have claimed the said amount. Mr.Cheulkar made a point that the Tribunal after awarding the compensation specifically passed the order that the appellant shall get 25% of the amount and respondent Nos.3 and 4 are entitled to

get 75% as respondent Nos.3 and 4 are entitled to get 75%. As the respondent Nos.3 and 4 are not alive, the remaining 25% of the amount is to be given back to the insurance company because there is specific order giving only 25% of the amount to the appellants.

6. Another subsequent event is taken into account by this Court and the court has to deal with it now as the Civil Application No.1109 of 2012 was filed for intervention by two ladies i.e., Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde. They claim that they are the daughters of the deceased Vasantrao and they were not made parties. Though they were married they are financially unsound and they are the legal representatives of the deceased father and, therefore, they intervened. Pursuant to the order passed by my predecessor on 3.8.2017, while entertaining this Civil Application, it was noted down that when the first application was made, the two sisters Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde were sought to be excluded. Now they filed this application seeking impleadment and both the ladies were asked to remain present on the scheduled date. Instead, they filed an additional affidavit dated 21.7.2017 affirmed

before the Associate of this Court wherein they have stated that they give up their right and they do not want any amount of compensation. Therefore, my predecessor has directed the two daughters to remain present by order dated 3.8.2017 in the Court.

7. Today, the daughters Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde, are present in the Court. They were asked in the Court whether they have waived off their right of compensation or not or they still claim it? They answered that they want their share in the compensation and they confirm their demand as per their prayer made in the Civil Application No.1109 of 2012. In view of this, considering the peculiar facts and circumstances of the case, I am inclined to grant the remaining 25% alongwith interest accrued thereon, to the two daughters i.e., Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde which shall be divided equally i.e., 12.5% each between the two ladies.

8. I have considered the submissions made by the learned Counsel for the insurance company, however, these submissions cannot be appreciated mainly on the ground that the insurance company has not challenged the order passed by the Tribunal and secondly, the insurance company is anyhow liable to pay the

compensation for the death of the deceased Vasantao. How the amount is to be distributed is a discretion of the Tribunal or the Court and however, the Court has to take care that this discretion is not to be used arbitrarily but to be used in a just and proper manner.

9. Considering all these facts and circumstances, the remaining 25% alongwith interest accrued thereon, is allowed to be withdrawn by the two daughters i.e., Smt.Vaishali Rajendra Shirsat and Smt.Vidya Balaji Shinde, which shall be divided equally i.e., 12.5% each between the two ladies. The identity of the two ladies be verified by the Registry before the withdrawal of the amount.

10. First Appeal is disposed of accordingly.

11. In view of the disposal of the First Appeal, all pending Civil Applications also stand disposed of.

(MRIDULA BHATKAR, J.)