

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

**FIRST APPEAL NO. 1160 OF 2016
WITH
CIVIL APPLICATION NO.1854 OF 2014
IN
FIRST APPEAL NO. 1160 OF 2016**

National Insurance Co. Ltd.

...Appellant

Versus

Praveen Gajendra Kashid & Ors.

...Respondents

.....

Mr.Devendranath S. Joshi i/b. Harshada M. Rane for the Appellant.
Mr.R.S.Alange for Respondent Nos. 1 to 3.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 07, 2017**

P.C. :

1. This appeal is directed against the judgment and award dated 11.06.2013 passed by the learned Chairman, Motor Accident Claims Tribunal, Solapur, thereby directing the opponents to pay jointly and severally compensation of Rs. 15,50,000/- alongwith interest @ 7.5% p.a. from the date of filing of the petition till realization of the amount towards the death of the father of respondent nos. 1 and 2 and son of respondent no. 3.

2. One Gajendra Kashid was driving the motorcycle and his wife Ranjana Kashid was pillion rider. A truck no. KA-39/9110 came in a high speed from back side and hit to the motorcycle. In the said accident, Gajendra and Ranjana both have lost their lives. Respondent nos. 1 and 2 are the sons and respondent no.3 is the mother of deceased Gajendra and they have filed the claim application under Section 166 of the Motor Vehicles Act.

3. The Insurance Company and opponent no.1 i.e. the owner of the truck appeared. They have denied the liability by filing Written Statement at Exhibits 33 and 18 respectively. After considering the evidence of both the parties, the learned Chairman, Motor Accident Claims Tribunal, Solapur, allowed the claim petition. This appeal is filed mainly on the ground of quantum.

4. Learned counsel for the appellant- Insurance company has submitted that the trial Court has committed an error in adopting multiplier i.e. 15, and the appropriate multiplier is 14. Learned counsel has further submitted that the deceased was negligent in driving the motorcycle and he was trying to overtake the truck by wrong side due to which foot rest of the motorcycle dashed to the footpath and the deceased and his wife fell down and met with an accident. Learned counsel has further submitted that the trial Court has erred in granting the amount of consortium of Rs. 1,50,000/-, which ought not to have been granted, as the claim is not filed by the spouse.

5. Learned counsel for the respondents/original claimants opposed this appeal. He has fairly conceded that the age of the deceased at the time of accident was 45 so 14 is an appropriate multiplier. He has supported the order passed by the learned Chairman, Motor Accident Claims Tribunal, Solapur. He has argued that the amount of compensation awarded by the learned Chairman, M.A.C.T., Solapur, is in fact is on lesser side, the learned Chairman, M.A.C.T., Solapur, on the contrary, did not consider certain heads for which the compensation ought to have been awarded to the claimants. He has pointed out that no compensation is granted for loss of love and affection.

6. Heard submissions. Perused the judgment and award and other papers. The deceased was 45 years old and, therefore, multiplier is 14. The learned Chairman, M.A.C.T., Solapur, has erred in adopting 15 as a multiplier and, therefore, the amount of loss of income is to be calculated as follows:

Notional Income	:	Rs. 12,000/-
Deduction	:	1/3 rd i.e. Rs. 4,000/-

	=	Rs. 8,000/- per month
	=	Rs. 8000/- * 12 (Month) = Rs.96,000/-
	=	Rs. 96,000 * 14 = Rs. 13,44,000/-

7. The facts of the case disclose that in the accident the father and mother both were killed and thus the children, who are the claimants as sufferer and similarly, respondent no.3 i.e. the mother has also lost her

son at the old age. Thus, both the children and the mother ought to have been granted the compensation under the head of loss of love and affection, which is not awarded. The learned Chairman, M.A.C.T. has erred in granting the amount of compensation for loss of consortium i.e. Rs. 1,50,000/-, ignoring the fact that spouse is not a party to the petition, who is expired alongwith the husband. Hence, the amount of compensation of Rs.1,50,000/- is required to be reduced. Considering these facts and the calculations made by the learned Chairman which he did not take into account, I am of the view that though the multiplier is reduced by 1 and Rs. 1,50,000/- towards loss of consortium is reduced, it is necessary to consider the other heads for which compensation ought to have been given for loss of love and affection so also loss of estate. It is an appeal filed by the Insurance Company and not by the original claimant. However, the Act under which the proceedings are filed and trial is a social legislation so the Court has to see whether just and adequate compensation is granted or not. The learned Chairman, M.A.C.T., Solapur ought to have granted the amount under the heads of loss of love and affection and loss of estate, but he failed to do so. Hence, I am of the view that the amount under required heads of loss of love and affection is Rs. 1 lakh each for the children and Rs. 50,000/- for the mother, and loss of estate if at all taken into account, it will make a good total amount of compensation i.e. Rs. 16,00,000/- including no fault liability. On some counts, the appeal is allowed. No amount is required to be reduced. The finding of the learned Chairman, M.A.C.T., Solapur, on the point of rate of interest is not disturbed. Appeal is disposed of accordingly.

8. In view of dismissal of the First Appeal, nothing survives in the Civil Application and the same is disposed of as such.

(MRIDULA BHATKAR, J.)