

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

FIRST APPEAL NO.2116 OF 2009

1. Smt. Sonubai Raosaheb Hon,
Age: 30 years, Occ: Household,
2. Master Nanasaheb Raosaheb Hon,
Age: 9 years, Occ: Education,
3. Master Aditya @ Adinath
Raosaheb Hon,
Age: 7 years, Occu: Education,

Appellant Nos. 2 & 3 are minors
through Mother & Guardian
Appellant No.1.

All R/o Chandekasare, Tq. Kopargaon,
Dist. Ahmednagar.

...Appellants

Versus

1. Dr. Rajendra Govindlal Goyal,
Age: 40 yrs, Occu: Business,
R/o 27-B, Carter Road,
Bandra (West) Bombay-400 050
(Owner of Car No.MH-02/J-3882)
2. National Insurance Co. Ltd.,
Br. Maker Bhavan No.1
Bombay.
3. Shri Bhanaji Bajirao Hon,
Age: 58 yrs, Occu: Nil,
4. Sau. Shakuntala Bhanaji Hon,
Age: 55 yrs, Occu: Household,
Both R/o. Chandekasare, Tq:
Kopargaon, Dist. Ahmednagar.

...Respondents

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Mr. D.R. Markad, Advocate for Appellants.

Mr. D.V. Soman, Advocate for Respondent No.2.

Mr. S.V. Kulkarni, Advocate for Respondent No.2.

Mr. S.P. Kotkar, Advocate for Respondent Nos. 3 &

4.

...

CORAM : P.R. BORA, J.
DATED : 16th JANUARY, 2019.

ORAL JUDGMENT:-

. Heard the learned counsel for the parties.

2. A small issue is raised in the present appeal that though the Tribunal has recorded a finding holding the appellants-claimants entitled for the compensation to the tune of Rs.4,32,000/- awarded the compensation of Rs.3,50,000/- for the reason that the appellants-claimants had restricted their claim to that extent and had paid the Court fees on the said amount. The findings recorded by the Tribunal and the ultimate conclusion arrived at by the Tribunal are apparently unsustainable in view of the settled legal positions. It need not be stated that under Section 168 of the Motor Vehicles Act, the Tribunal is cast with the responsibility to award just and fair amount of compensation payable to the claimants before it. When the Tribunal had reached to the conclusion that the claimants have brought the evidence on record which entitles them to receive the total compensation of Rs.4,32,000/-, the Tribunal must have awarded the said compensation and could have

ask the claimants to pay the deficit court fee stamp. The order therefore deserves to be set aside and needs to be modified to that extent.

3. The learned counsel Shri Soman appearing for the insurance company was fair enough in conceding the settled legal position and submitted for passing appropriate orders.

4. I have perused the impugned judgment. The Tribunal after having assessed the evidence brought on record by the parties has held the appellants entitled for the total compensation of Rs.4,32,000/- however, restricted the award to Rs.3,50,000/- for the reason that the appellants had restricted their claims to that extent and had paid the court fees on the said restricted amount. The order so passed by the Tribunal is apparently unsustainable in view of the law settled in this regard. Section 168 of the Motor Vehicles Act cast duty on the Tribunal to arrive at just compensation. The Motor Vehicles Act is a beneficent legislation and the compensation can be awarded even in excess of the amount claimed by the claimants if, on the basis of the evidence the

(4)

Tribunal arrives at the conclusion that the claimants are entitled for more compensation than claimed by them. As held by the Hon'ble Apex Court in the case of "**Nagappa Vs. Gurudayal Singh and Others, 2003 ACJ 12**", the Tribunal was not justified in restricting the award to the amount claimed when on the basis of the evidence assessed by it, the claimants were held entitled by it for the compensation of Rs.4,32,000/-. For the reasons stated above, the appeal deserves to be allowed. In the result, the following order is passed:

ORDER

- i) The appellants are held entitled to receive the total compensation of Rs.4,32,000/- inclusive of NFL compensation jointly and severally from respondent nos. 1 and 2 together with interest thereon at the rate of 9% p.a. from the date of filing of the petition till its realization.
- ii) The appellants shall pay the deficit Court fee.
- iii) After deficit court fee is paid, the modified award be prepared.

(5)

iv) The appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//