IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 79 OF 2013

The New India Assurance Co. Ltd.]
Divisional Manager,]
Near Parvati Talkies, Kolhapur]
District Kolhapur 416001]
…. **Appellant**

Versus

1. Salma Nasir Shaikh]
   Age: 27 years, Occ: Housewife]

2. Nazia Nasir Shaikh]
   Age:]

3. Master Sahil Nasir Shaikh]
   Age:]

4. Khairun Mohamad Shaikh]
   Occupation: Nil]
   Respondents 2 & 3, minors,]
   Through natural guardian]
   Mother, Respondent No.1]

5. Abdul Farid Mohamad Shaikh]
   Age: Major, Occ: Business]

   All Residing at Shivaji Nagar Gramin]
   5th Lane, Gargoti, Tal. Bhudargad]
   District Kolhapur 416002]
…. **Respondents**

Mr. S. M. Dange, for the Appellant.
Mr. Avesh A. Ghadge i/b Mr. Akshay P. Shinde, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th DECEMBER, 2024.

ORAL JUDGMENT. :

1. The issue involved in this appeal is the deceased was borrower of the offending vehicle.

2. It is contention of learned counsel for the Appellant/Insurance Company that the deceased had borrowed the vehicle from his brother, who was owner of the vehicle, and he was driving it. He gave dash to the tree and died. The accident occurred due to sole negligence of the deceased, as deceased was borrower of the vehicle. By borrowing the vehicle, the deceased had stepped into the shoes of owner, therefore, he is not entitled for compensation but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the deceased was employed by his

brother. In written statement, the owner of the offending vehicle has stated that he had employed the deceased to drive the vehicle and was paying him Rs.3,250/- per month. This evidence has not been rebutted by the Appellant. The Tribunal has passed well reasoned order, and no interference is required in it, and requested to dismiss the appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal").

5. It is contention of learned counsel for the Appellant that the deceased had borrowed his brother's vehicle, and the accident occurred, thus he had stepped in the shoes of owner and he is not entitled for compensation. The owner of the offending vehicle has filed written statement before the Tribunal. In the written statement, he has stated that he had employed the deceased as a driver for his vehicle and was paying him Rs.3,250/- per month. The Appellant/Insurance Company, however, did not called owner of the vehicle as a witness to prove that the deceased had borrowed the vehicle. There has been no rebuttal to the stand taken by the owner of vehicle. As per the view of Hon'ble Apex Court in the case of

National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 OF 2019, it was onus of the Appellant/Insurance Company to prove that the deceased was not employee of vehicle's owner, but it has not been proved. Hence, I do not see merit in the contention that the deceased had borrowed the vehicle.

6. In view of above, I pass following order:

ORDER

i. Appeal is dismissed.

ii. The Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rules.

iv. Record and Proceedings be sent back to the Tribunal.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)