

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO.4274 OF 2018  
IN  
FIRST APPEAL NO.1116 OF 2015**

|                                  |     |             |
|----------------------------------|-----|-------------|
| Varuna Kapil Kapoor and Ors.     | ... | Applicants  |
| and                              |     |             |
| The New India Assurance Co. Ltd. | ... | Appellant   |
| versus                           |     |             |
| Varuna Kapil Kapoor and Ors.     | ... | Respondents |

Mr. Devendranath S. Joshi, for Appellant.

Mr. Abhijeet A. Joshi, for Respondent Nos.1 to 3.

Mr. Kunal Vaishnav with Ms. Debashree Mandpe i/by Ganesh and Co., for Respondent No.6.

**CORAM: AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

**DATE: 14th JUNE, 2019**

**P.C.:**

1. The above First Appeal is filed by the Applicant – The New India Assurance Co. Ltd., impugning the order dated 6<sup>th</sup> April, 2015 passed by the Motor Accident Claims Tribunal, awarding compensation of Rs.7,05,97,500/- to the claimants. The deceased Kapil Somnath Kapoor who was 37 years old, was proceeding in his motorcar bearing Registration No.DL-7C/A-3681 on 26<sup>th</sup> December, 2000 at about 3.00 hrs., on the Reay Road Bridge Junction, when a motor tempo bearing Registration No.MH-04-C-7700 owned by M/s. Rikadi Food Processors Pvt. Ltd. - Respondent No.7, dashed against the motorcar of the deceased. Though the deceased was taken to

J.J.Hospital, Byculla, for treatment, he was declared dead before admission. The heirs of the deceased at the time of demise were his widow, two minor daughters, parents and one mentally retarded sister.

2. Application No.2114 of 2002 seeking compensation of Rs.15 Crores was filed by the claimants (legal heirs of the deceased) before the Motor Accident Claims Tribunal, Mumbai.

3. The issues framed and the findings given by the Motor Accident Claims Tribunal, Mumbai, by its order dated 6<sup>th</sup> April, 2015 are reproduced hereunder :

| <i>Sr. No.</i> | <i>Issues</i>                                                                                                                                                                                                                                                                                                                                                  | <i>Findings</i>                                                          |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| 1.             | <i>Whether the applicants prove that the Vehicular accident occurred on 26.12.2000 at about 3.00 a.m., on Barrister Nath Pai road below Reay Road bridge junction, Byculla, Mumbai in which the deceased Kapil Somnath Kapoor lost his life, had taken because of rash and/or negligent driving of Motor Tempo No.MH-04/C-7700 belongs to the Opp. Party ?</i> | <i>Yes.</i>                                                              |
| 2.             | <i>Whether the annual income of the deceased was Rs. 75 Lakhs ?</i>                                                                                                                                                                                                                                                                                            | <i>Partly in positive i.e. annual income of deceased was Rs.50 lacs.</i> |
| 3.             | <i>Whether the Insurer of the Motor Tempo bearing No.MH-04/C-7700 proves that the deceased was negligent and/or rash while driving the motor car bearing No.DL-7C/A-3681 and the same has been resulted into the vehicular accident, if yes, to what extent, the contributory</i>                                                                              | <i>Negative</i>                                                          |

*negligence of the deceased, should be held ?*

- |    |                                                                                                     |                                 |
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| 4. | <i>Whether the applicants are entitled to the compensation, if yes, what amount and from Whom ?</i> | <i>Yes, as per final order.</i> |
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4. As stated earlier, the Tribunal granted compensation of Rs.7,05,97,500/- to the claimants.

5. On 8<sup>th</sup> January, 2016 this Court passed the following order :

*“Issue notice to the Respondent Nos.1 to 6, returnable on 22<sup>nd</sup> February, 2016. There will be ad-interim stay in terms of prayer clause (a) subject to condition of the Applicant depositing a sum of Rs.1 Crore with the Tribunal within a period of six weeks from today. As and when the amount is deposited, the Tribunal will permit the first Claimant to withdraw a sum of Rs.2,50,000/- without security. The Tribunal will also permit the Claimant Nos.5 and 6 to withdraw a sum of Rs.50,000/- each without security.”*

6. The Insurance Company had deposited an amount of Rs.1 Crore. As can be seen from the above order, an amount of Rs.3,00,000/- was permitted to be withdrawn. Thereafter, the father of the deceased and his sister have passed away. The widow of the deceased and her two children have filed the present civil application to withdraw the amount of Rs.97 Lakhs. The widow of the deceased has stated in the civil application that since she does not have independent source of income and is unemployed, she needs money to support herself and her two major

daughters and their education. The daughters Ishita Kapil Kapoor and Anaya Kapil Kapoor have become major and are pursuing their higher studies at Lancaster University and Surrey University respectively.

7. In view of the above facts and circumstances, we allow the Applicants i.e. the widow of the deceased i.e. Varuna Kapil Kapoor and her two daughters to withdraw their share out of amount of Rs.97 Lakhs deposited with the Tribunal. The balance amount shall be retained by the Tribunal.

6. The Civil Application is accordingly disposed of.

**( S.J.KATHAWALLA, J. )**

**( AKIL KURESHI, J. )**