

**THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CIVIL APPLICATION (CAF) NO.2259/2018

IN

FIRST APPEAL (ST) NO.22094/2017

The New India Assurance Company Ltd.

Vs.

Vinayak Ananda Kamble and ors.

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
--	---------------------------

Ms. Anita Mategaonkar, Advocate for appellant.

Ms Rukhsar Sheikh, Advocate h/f Mr. M. Anilkumar,
Advocate for non-applicant Nos. 2 to 4.

CORAM : NTIN W SAMBRE, J.

DATE : SEPTEMBER 30, 2019.

CIVIL APPLICATION NO.2259/2018

. In view of no objection extended by learned counsel for the respondent, delay stands condoned.

2. The civil application is disposed of accordingly.

FIRST APPEAL ST NO.22094/2017

. Heard.

2. Deceased Vaibhav was a driver on goods vehicle bearing registration No.AP -31-Y 7247. While proceeding to Pune on 4th August, 2014, he was hit by an offending goods vehicle bearing registration No.MHo9-CA0904.

3. The claimants who are sons and widow have lodged a Claim Petition under Section 166 of the Motor Vehicle Act. By the award impugned, the tribunal has directed the appellant i.e.

Insurance Company, with whom the offending vehicle was insured, to pay a compensation of Rs.23,46,000/- with interests at the rate of 9% per annum. As such this appeal.

4. The learned counsel for the appellant would make two fold submissions :-

1. That a case of contributory negligence can be inferred as the vehicle on which deceased was working as a driver was recklessly parked on the road and the Insurance Policy of the offending vehicle (Ex.33) provides for liability only to the extent of 7.5 Lacs. As such, the submissions are, even if the order in the Claim Petition is to be maintained, the amount is required to be reduced to Rs. 7.5 lacs to the extent of liability of the appellant and balance amount be directed to be paid by the vehicle owner.

5. The next submission would the award of compensation particularly on the issue of loss of consortium is granted at much higher rate than permissible in the matter of **National Insurance Company Ltd. Vs. Pranay Sethi** as declared by the Hon'ble Apex Court.

6. Per contra, the learned counsel for the respondent/claimants while extending no objection for condonation of delay, would urge that the appellant has failed to examine any witness and that being so, the appellant has failed to adduce any evidence in support of the aforesaid contention. As such, a dismissal

of appeal is sought.

7. Considered rival submissions.

8. The factum of accident is not in dispute.

9. What is disputed is the liability of the appellant to pay the compensation. As far as the contention of the appellant of limited liability to the extent Rs. 7.5 lacs is concerned, the learned counsel for the respondent/claimants has rightly pointed out that said fact ought to have been proved by the appellant by adducing evidence in support of the said contention. That being so, even if the policy was exhibited that by itself it cannot be concluded to mean that the contents in the policy were proved i.e. to mean that the appellant's liability was restricted to the extent of Rs.7.5 Lacs.

10. Apart from above, the Claims Tribunal has decided the Claim Petition thereby awarding compensation including that of loss of consortium based on the position of law as was existing on the date of judgment.

10. That being so, no case for interference is made out. The appeal fails. Hence, the same stands dismissed.

11. The appellant is directed to deposit the balance amount of compensation before this Court within a period of two months from today.

(NITIN W SAMBRE, J.)