

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

**FIRST APPEAL NO.2560 OF 2011
ALONG WITH
CIVIL APPLICATION NO.3860 OF 2011**

National Insurance Company Limited .. Appellant/Applicant
Vs.
Ramesh Laxman Mhatre & Ors. .. Respondents

Mr.Rahul Mehta i/by M/s.KMC Legal Venture for the appellant/
applicant.
Mr.Sanjay Anant Ghaisas for the respondent nos.1 & 2.

CORAM : R.D.DHANUKA, J.
DATE : 27th January 2020

P.C.:

. By this First Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellant (original respondent no.2) has impugned the judgment and award dated 25th February 2011 passed by the MACT, Raigad at Alibag allowing the MACP No.752 of 2006 filed by the respondents and directing the appellant and the respondent no.3 jointly and severally to pay Rs.2,50,000/- as compensation to the respondent nos.1 & 2 with interest @Rs.7.5% p.a. from the date of filing of the claim petition till its realisation. By consent of the appellant and the respondent nos.1 & 2, the First Appeal is heard finally. Some of the relevant facts for the purpose of deciding this First Appeal are as under :-

2. It was the case of the respondent nos.1 & 2 that on 24th September 2006, Nitesh Ramesh Mhatre who was 4 year-old was crossing the road along with his father, mother and other persons on Bombay Pune Highway at Dandphata road leading to Takadevi temple. One truck came from Panvel side bearing No.MH-06/K-9422 and gave dash to the said Nitesh who died on the spot. The said offending vehicle was resisted by the appellant by filing written statement. The respondent no.1 entered the witness box. The appellant did not examine any witness. The respondent no.1 was cross-examined by the appellant. The respondent nos.1 & 2 made a claim of Rs.2,50,000/- as just compensation. The respondent nos.1 & 2 proved before the Tribunal that the pedestrians were used to walk on national highway. There was no foot-path. There was no space between the divider in order to cross the road. The Tribunal has rendered a finding that during the entire cross-examination, the insurance company had not denied the fact that the accident was occurred due to negligence of the driver of the offending vehicle. It has not been challenged by the insurance company that the deceased Nitesh was four years old and was clever enough and talented boy. The respondent nos.1 & 2 had also produced FIR, spot panchnama, inquest panchnama and postmortem report before the Tribunal.

3. The Tribunal has rendered a finding that the driver of the offending vehicle was solely responsible for the said accident. The

Tribunal has accordingly awarded Rs.2,50,000/- as just and reasonable compensation.

4. Mr.Mehta, learned counsel for the appellant submits that the Tribunal had not given any bifurcation of Rs.2,50,000/-.

5. Learned counsel for the respondent nos.1 & 2, on the other hand, submits that even if notional income is considered by the Tribunal along with various conventional and non-conventional heads of compensation, the compensation would have been much more than Rs.2,50,000/-. Learned counsel for the appellant could not dispute this proposition.

6. No other submissions are urged by the learned counsel for the appellant. It is the duty for the Tribunal to award just and reasonable compensation. In the facts and circumstances of this case, the Tribunal is justified in awarding compensation of Rs.2,50,000/-. I do not find any infirmity with the impugned judgment and award dated 25th February 2011.

7. The respondent nos.1 & 2 would be entitled to recover the entire decretal amount out of the amount deposited by the appellant with

the MACT. If there is any shortfall in recovering the amount by the appellant, the same shall be deposited by the appellant within two weeks from the date of such computation. If there is any surplus left after paying the decretal amount to the respondent nos.1 & 2, the same shall be refunded by the Tribunal to the appellant.

8. Office is directed to transmit the statutory deposit of Rs.25,000/- deposited by the appellant to the concerned MACT expeditiously.

9. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the First Appeal itself, none of the pending civil applications would survive and are accordingly disposed of. No order as to costs.

R.D.DHANUKA, J.