

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO.604 OF 2016
WITH
CIVIL APPLICATION NO. 1448 OF 2016**

National Insurance Co. Ltd. Appellant

Vs.

Smt. Laxmi Pandurang Khandekar Respondents
& Ors.

Mr. Amol Gatne for Original Appellant in FA and for Applicant in CAF.
Mr. Yuvraj P. Narvankar a/w Adwait A. Agashe for Respondent in FA and for
Applicant in IA.

Coram : NITIN W. SAMBRE, J.

Date : 25th AUGUST, 2021

P.C.:

1. Heard respective Counsel.
2. Arising out of the accident occurred on 16th February, 2011, when Tempo bearing registration number MH15/BJ-1668 hit motorcycle bearing registration MH-14/AZ-9244, resulting into rider Pandurang Kalappa Khandekar died during treatment on 16th March, 2011, the claimants, legal heirs of deceased-Pandurang lodged the Claim Petition bearing No. 402 of 2011, which came to be partly allowed by the learned

(2)

Member, M.A.C.T., Pune vide his judgment dated 10th February, 2015 with following observations.

O R D E R

1. The Petition is partly allowed with proportionate costs.
2. The Respondents are directed to pay jointly and severally compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) including NFL to the Petitioners with interest @ 9% p.a. from the date of petition i.e. 8/4/2011 till its realisation.
3. After deposit of amount by the opponents, said be given equally to the Petitioners by account payee cheque.”
3. The Counsel appearing for the Insurance Company while questioning the aforesaid judgment would urge that the driver of offending vehicle i.e. Tempo was not holding driving licence. Through private investigator, investigation to that effect was carried out and appropriate papers were handed to the lawyer representing the interest of the

(3)

Appellant- Insurance Company, which he has failed to produce. As such breach of policy can be inferred. According to him, based on this position, Court may consider a prayer for remand of the matter.

4. The further contentions are, the Tribunal has committed an error in awarding the compensation based on the gross salary of deceased- Pandurang, which is considered to be Rs.15,672/-, whereas the Tribunal has not adjusted the amount of Professional Tax paid by deceased- Pandurang and as such the quantum awarded needs to be reduced to that extent.

5. The Counsel for the Respondent-Claimant would support the impugned award.

6. Considered rival submissions.

7. Fact remains that claim of independent enquiry/ investigation by the Insurance Company and a report to that effect was handed over to the lawyer of the Insurance Company in the claim petition cannot be inferred from the record of the present Appeal or otherwise for want of availability of any material supporting such claim.

(4)

8. Appellant has not preferred application under Order 41, Rule 27 C.P.C. thereby claiming that such evidence was available.

9. If the contention of the Appellant that the amount of Rs.300/- towards Professional Tax should have been adjusted while calculating income of the deceased is appreciated, I hardly see any substance in the said contention so as to call for interference at the appellate stage to upset the findings recorded on the issue of monthly salary.

10. Fact remains that the Tribunal while awarding compensation was sensitive to the fact of adjustment of the expenses of the deceased from his income, which is calculated for the purpose of awarding compensation. The Tribunal has proceeded to adjust an amount of Rs.62,688/- i.e. 1/3rd of yearly salary of deceased- Pandurang and proceeded to award compensation based on yearly income of Rs.1,25,376/-.

11. In the aforesaid backdrop, in my opinion, no case for interference in the first appellate jurisdiction is made out. The Appeal, as such lacks merits, stands dismissed.

(5)

12. Statutory amount deposited in this Court is directed to be transferred to the Claims Tribunal forthwith.

(NITIN W. SAMBRE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**INTERIM APPLICATION NO. 853 OF 2021
IN
FIRST APPEAL NO.604 OF 2016**

Smt. Laxmi Pandurang Khandekar Applicants
& Ors.

Vs.

National Insurance Co. Ltd. & Anr. Respondents

In the matter between

National Insurance Co. Ltd. Appellants

Vs.

Smt. Laxmi Pandurang Khandekar Respondents
& Ors.

Mr. Amol Gatne for Original Appellant in FA and for Applicant in CAF.
Mr. Yuvraj P. Narvankar a/w Adwait A. Agashe for Respondent in FA and for
Applicant in IA.

Coram : NITIN W. SAMBRE, J.

Date : 25th AUGUST, 2021

P.C.:

1. This is an application for withdrawal of the decretal amount deposited in the Motor Accident Claims Tribunal, Pune.

(2)

2. In view of dismissal of the Appeal, the application stands allowed.

3. The claimants shall be entitled to withdraw the amount in accordance with dictum of the Claims Tribunal.

4. The Claimants shall appear before the Claims Tribunal for withdrawal of the amount thereby demonstrating that claimant Nos. 2 and 3, namely Ajit Pandurang Khandekar and Kumari Komal Pandurang Khandekar, son and daughter of deceased-Pandurang have attained majority on this date. The Tribunal after ascertaining the same shall deal with a prayer of disbursement of the amount, pursuant to the order of withdrawal granted by this Court.

(NITIN W. SAMBRE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 1448 OF 2016
IN
FIRST APPEAL NO.604 OF 2016**

National Insurance Co. Ltd. Applicant

Vs.

Smt. Laxmi Pandurang Khandekar Respondents
& Ors.

Mr. Amol Gatne for Original Appellant in FA and for Applicant in CAF.
Mr. Yuvraj P. Narvankar a/w Adwait A. Agashe for Respondent in FA and for Applicant in IA.

Coram : NITIN W. SAMBRE, J.

Date : 25th AUGUST, 2021

P.C.:

1. In view of dismissal of the Appeal, the Application for grant of stay has rendered infructuous. The Application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)