

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.634 OF 2009

[Smt. Satyabhama Govindrao Gadhave and others .vs. Digamber S. Nikam and one]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM: M.S. SONAK, J.

DATED: DECEMBER 10, 2021.

P.C.

None for the appellants or the respondents.

2. This appeal is directed against the judgment and award dated 20.10.2008 made by the Motor Accident Claims Tribunal, Buldhana (Tribunal) in M.A.C.P No.104/2005.

3. The grievance of the appellants appears to be twofold to the extent (a) that the compensation of only Rs.5,39,180/- has been granted as against the claimed amount of Rs.7,00,000/-; (b) that the insurance company has been wrongly exonerated. In any case, a pay and recover order, which ought to have been made, has not been made.

4. From perusing the impugned order as well as the material on record, it is clear that the Tribunal has granted the appellants i.e. the widow and son of the deceased Govinda, compensation of only Rs.5,000/- for loss of consortium and the compensation of only Rs.5,000/- to the son for the loss of love and affection of father.

5. Having regard to the law laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Limited .vs. Pranay Sethi and others, (2017) 16 SCC 680, United India Insurance Company Limited .vs. Satinder Kaur @ Satwinder Kaur and others, 2020 ACJ 2131 and Magma General Insurance Company Limited .vs. Nanu Ram alias Chuhru Ram and others (2018) 18 SCC 130**, this amount should have been Rs.40,000/- in favor of each of the appellants. Besides, in this case, no compensation has been awarded towards the loss of estate and, therefore, compensation of Rs.15,000/- is due on this count. Thus, the appellants are entitled to compensation of Rs.1,05,000/- towards loss of estate. Since Rs.10,000/- has already been awarded, this amount would come to Rs.95,000/-.

6. There is no clarity as to why the insurance company has been exonerated in this case. However, even assuming that the insurance company was required to be exonerated, the Tribunal, in the facts of the present case, should have made pay and recover order. This is in terms of the law laid down by the Hon'ble Supreme Court in several such cases. The impugned award warrants interference to this extent.

7. This appeal is therefore partly allowed and is disposed of by making the following order :

(a) The compensation amount is enhanced from Rs.5,39,180/- to Rs.6,34,180/-.

(b) The insurance company will have to first pay this amount, after adjusting the amount that may have already been made, and shall thereafter recover this amount from the owner/driver of the offending vehicle.

(c) The direction about interest is maintained.

(d) The direction about apportionment of the compensation is also maintained. The direction about investment has worked itself out and is accordingly now set aside. The impugned award is modified to the aforesaid extent.

(e) The insurance company should deposit/pay the amount as now awarded/modified to the appellants, within eight weeks from today.

(f) Once the amount is deposited, the appellants will be at liberty to withdraw the same.

(g) There shall be no order for costs.

[M.S. SONAK, J.]

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