

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

FIRST APPEAL NO.1515 OF 2008

[Smt. Ushatai Baburao Khillare and one .vs. Sheikh Kaisar Sheikh Kadar 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. The appellants, who were the claimants, challenged the judgment and award dated 17.12.2007 made by the Motor Accident Claims Tribunal (Tribunal) Pusad in M.A.C.P. No.130/2005, mainly on the ground that the Tribunal erred in not awarding the claimants entire determined compensation, but restricting the award only to 2/5th of the compensation, so determined.

3. The Tribunal, in this case, has determined the compensation at Rs.4,00,000/- as is evident from the finding in paragraph 12 of the impugned award. However, the Tribunal held that in addition to the widow and the dependent son (appellants herein), the deceased had yet another major son and two married daughters. Thus, the compensation had to be distributed between the legal representatives of the deceased. The share of the present appellants was therefore restricted only to Rs.1,60,000/-.

4. In my judgment, the approach of the Tribunal is not correct. The other son or the married daughters had not filed the claim petition, possibly because they were not dependent upon the income of the deceased. The widow and the other son, who was dependent upon the deceased, actually filed the claim petition and pursued the same. The Tribunal, in such circumstances, was not justified in ignoring the decision in **Revaben and other .vs. Kantibhai Narottambhai Gohil and others, 1995 ACJ 548**, which was cited before it and restricting the compensation.

5. Accordingly, the impugned award is modified and the entire compensation amount of Rs.4,00,000/- together with interest is directed to be paid by the respondents jointly and severally to the appellants herein. This amount will have to be paid/deposited within two months from today, after adjusting the amount that may have already been paid. This appeal is allowed. There shall be no order for costs.

[M.S. SONAK, J.]

Gulande