

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

45 FIRST APPEAL NO.1678 OF 2016

THE NEW INDIA ASSURANCE CO. LTD. THR ITS INCHARGE
(LEGAL HUB), AURANGABAD

VERSUS

ANITABAI KAILAS CHITTE AND OTHERS

...

Advocate for Appellant : Mr. A. G. Kanade
Advocate for respondent No.5 : Mr. V. P. Patil

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CORAM : S. G. DIGE, J.

DATE : 12.09.2022

PER COURT :-

This appeal is preferred on the point of pay and recovery order passed by learned Member, Motor Accident Claims Tribunal, Jalgaon (for short "the Tribunal").

Brief facts of the case are as under :-

2. On 2nd September, 2006 at about 10.30 p.m, deceased Kailas was going along with Bharat Patil on his motorcycle. The driver of the motorcycle was driving his vehicle negligently. As such, it got slipped and met with an accident, in which Kailas died on the spot. At the time of accident deceased Kailas was 32 years old and having a hair cutting saloon wherefrom he was earning Rs. 6,000/- per month.

Therefore, on account of accidental death of Kailas, his legal heirs i.e. claimants (respondent No.1 to 4 herein) filed the claim petition for getting compensation. The Tribunal has granted the compensation. Against said Judgment and award, this appeal.

3. The learned counsel for the appellant submits that the Tribunal has held that, there is breach of terms of Insurance policy. In spite of that, the Tribunal has directed the appellant to pay the amount first and recover the same from the owner of the vehicle. Hence requested to allow the appeal.

4. I have heard both learned counsel. Admittedly, there is breach of terms of insurance policy but the issue of pay and recovery order is no more res intergra, in view of Judgment of the Hon'ble Apex Court in case of **Pappu and Others Versus Vinod Kumar Lamba and Another** [2018 DGLS (SC 16)]. Hence I do not find any merit in this appeal hence I pass the following order.

ORDER

- (i) The First Appeal is dismissed.
- (ii) Respondent Nos. 1 to 5 are entitled to withdraw the amount if not withdrawn.
- (iii) No order as to costs.

**(S.G. DIGE,)
JUDGE**