

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

**INTERIM APPLICATION NO.17611 OF 2022  
IN  
FIRST APPEAL NO.316 OF 2022**

Dinkar Madhukar Bondge and Ors. ...Applicants

Versus

Cholamandalam General Insurance Co.  
Ltd. ...Respondent

...

Mr. Bharat Gadhavi for the Applicants  
Ms Gauri Warunjikar ib. Mr. Nitesh Bhutekar for the Respondent

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 17<sup>th</sup> OCTOBER, 2022.**

**P.C. :-**

1. The Applicants, who are original Claimants have sought withdrawal of the amount deposited by the Appellant-Insurance Company. By the impugned Judgment the Claims Tribunal has allowed the Claim Petition filed by the Claimants and has awarded compensation of Rs.10,07,000/- with interest @ 8% p.a from the date of application till realisation of entire amount.

2. Claimant Nos.1 and 2 are the parents of the deceased whereas Claimant No.3 is the sister and Claimant No.4 is the minor

brother of the deceased, who expired in a motor vehicular accident on 14/09/2015 involving bus No.MH-04-G-5340.

3. The Tribunal has held that it was a case of contributory negligence and deducted 50% towards contributory negligence.

4. Learned counsel for the Respondent -Insurance Company has opposed withdrawal mainly on the ground that the compensation awarded by the Tribunal is exorbitant and further that Respondent Nos.3 and 4 being the siblings of the deceased, are not entitled for compensation. She further submits that the Appellants have also raised a plea of breach of terms and conditions of the policy.

5. In *N.Jayasree vs. Cholamandalam M.S General Insurance Company Ltd. 2021 SCC Online SC 967* the Hon'ble Supreme Court has observed that the term 'legal representative' should be given a wider interpretation for the purpose of Chapter XII of MV Act and it should not be confined only to mean the spouse, parents and children of the deceased. It is held that every Act is a benevolent legislation enacted for the object of providing monetary relief to the victims or their families. Therefore, the MV Act calls for a liberal and wider

interpretation to serve the real purpose underlying the enactment and fulfill its legislative intent. It is held that in order to maintain a claim petition, it is sufficient for the claimant to establish his loss of dependency. Section 166 of the MV Act makes it clear that every legal representative who suffers on account of the death of a person in a motor vehicular accident should have a remedy for realization of compensation.

6. In the instant case, the Claimants are the parents and siblings of the deceased and being dependents are prima facie entitled to file petition under Section 166 of the Motor Vehicle Act.

7. A perusal of the impugned Judgment indicates that the Claimants had examined the employer and proved the income certificate and it is only on the basis of that said certificate the Tribunal has considered the income of the deceased as Rs.12,000/- per month. The Tribunal has already deducted 50% towards contributory negligence. As regards breach of terms and conditions of the policy, it is well settled that even in the case of breach of terms and conditions of the policy, for the reason that the driver was not holding valid and effective driving license, the Insurance Company is under an obligation

to satisfy the Award and to recover the same from the insured.

8. In the above facts and circumstances, prima facie the Claimants cannot be deprived of the compensation on the grounds raised in the appeal memo. Considering the reasons stated in the application and the grounds raised in the appeal memo, the Claimants are permitted to withdraw 50% of the compensation as per the impugned Judgment and Award with proportionate interest accrued thereon, subject to filing of an undertaking that the amount will be refunded with interest in the event the Appellant succeeds in the appeal.

9. The application stands disposed of.

**(SMT. ANUJA PRABHUDESSAI, J.)**

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