

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

FIRST APPEAL NO.187 OF 2012
IN
MOTOR ACCIDENT CLAIM PETITION NO.89/2008

APPELLANT : New India Assurance Co. Ltd.
(Ori. Resp-2 on R.A.) Through its Divisional Manager,
Dharmadaya Cotton Fund Road,
Walcut Compound, Amravati
Tq. & Dist. Amravati.

//VERSUS//

RESPONDENT : 1. Rajendra s/o Baburaoji Kalbande
(Ori. Applicants on R.A.) Aged 37 years Occ. Labourer

2. Diksha w/o Rajendra Kalbande
Aged 32 years Occ. Nil.

3. ~~Prajiwal s/o Rajendra Kalbande~~
~~Aged about 9 years Occ. Student~~

4. Rajesh Pathre
~~Aged Adult Occ. Nil~~
~~All r/o Kathora (Bk.)~~
~~Tq. & Dist. Amravati.~~

5. Mahesh s/o Sadashivrao Bahe
Aged Adult
r/o Chandur Bazar Dist. Amravati.

6. Anil Lokhande
~~Aged Adult Occ. Auto Rickshaw Driver~~
~~r/o Bemoda, Yashoda Nagar, Amravati.~~

Res. Nos.3, 4 & 6 deleted
as per Court's Order dt.
29.11.2010

(Ori. Resp-1 on RA)

Shri Akhilesh Potnis, Advocate h/f Shri M.M. Sudame, Advocate for the
Appellant.

Ms. Aastha Sharma, Advocate h/f Shri P.R. Agrawal, Advocate for
Respondent Nos.1 & 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 24th FEBRUARY, 2022.

ORAL JUDGMENT

01] This is an Appeal under Section 173 of the Motor Vehicles Act, 1988, (hereinafter referred to as “the said Act”) challenging the Judgment and Award dated 04/08/2010 in Claim Petition No.89/2008. By the impugned judgment, the Claims Tribunal has partly allowed the Petition and directed the Respondent Nos.1 and 2 to pay to the Claimant compensation of Rs.1,80,000/- with interest @ 7.5% per annum from the date of the petition till final realization.

02] Heard Shri Potnis, learned counsel for the Appellant and Ms. Aastha Sharma, learned counsel for the Respondent Nos.1 and 2. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

03] The Respondent Nos.1 and 2, who are the parents of the deceased Sharwari, had filed a Petition under Section 163-A of the said Act. These Respondents, who shall be hereinafter referred to as the Claimants, had alleged that on 19/11/2007, the Claimant No.2, her son and daughter were pillion riders on motorcycle bearing registration No.MH-27/Z-6976. The said motorcycle was driven by her brother Rajesh Pathre. They were going towards Chandur Bazar from Kathora. When they reached near the farm of Gajbe, there was a collision between the said motorcycle and the auto rickshaw bearing registration No.MH-27/C-6658 resulting in death of Sharwari, who was barely two years of age. The Claimants therefore claimed total compensation of Rs.3,00,000/-.

04] The owner of the motorcycle did not contest the proceedings. The Appellant – Insurance Company denied the accident and the age of the deceased Sharwari. The Appellant – Insurance Company also claimed that the driver of the motorcycle was not holding a valid and effective driving licence. The Appellant – Insurance Company also claimed that four persons were travelling on the motorcycle violating the Traffic Rules. The Appellant – Insurance Company therefore denied its liability to indemnify the insured for breach of terms and conditions of the policy.

05] The Tribunal, after considering the evidence on record, held that the death of Sharwari was caused due to the injuries sustained in the said accident. The Tribunal has also recorded a finding that the Insurance Company has failed to prove the breach of terms and conditions of the policy and has held that it is liable to indemnify the insured. The deceased in the present case was a child of two years of age. As regards the quantum of compensation, the Tribunal has referred to the decision of the Hon'ble Apex Court in the case of New India Assurance Co. Ltd. Vs. Satender and Others reported in 2007 ACJ 160 and awarded total compensation of Rs.1,80,000/-. The compensation awarded by the Tribunal cannot be said to be exorbitant. Hence, the impugned judgment does not warrant any interference.

06] Hence, the Appeal has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)