

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1153 OF 2008
WITH
CIVIL APPLICATION (CAF) NO.5245 OF 2006
IN
FIRST APPEAL NO.1153 OF 2008

The Oriental Insurance Co. Ltd. ... Appellant

V/s.

1. Shahanj Harun Shaikh,
2. Karishma Harun Shaikh,
3. Suraj Harun Shaikh,
4. Narayan Shivaji Gaikwad. ... Respondents

Ms. Poonam Mital for Appellant.

Mr. Jayant Bardeskar for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 8 MARCH, 2023

JUDGMENT:

1. Heard learned counsel for the Appellant and learned counsel for Respondents.
2. The issue involved in this Appeal is compensation awarded under Section 163(a) of the Motor Vehicles Act, 1988 (for short "MV Act").
3. It is contention of learned counsel for the Appellant that accident had occurred due to sole negligence of the deceased as he hit

the tree as he lost the control over the vehicle and died. The FIR was lodged against the deceased driver. The Claim Petition was filed under Section 163(a) of the MV Act. As the deceased was himself negligent in the said accident, the Tribunal should not have awarded compensation to the deceased under Section 163(a) of the MV Act. Learned counsel for the Appellant relied on the Judgment of **Ningamma & Anr vs United India Insurance Co.Ltd.**, reported in (2009 (0) SCC 1076).

4. It is contention of learned counsel for the Respondents/Claimants that under Section 163(a) of the MV Act, it is not necessary to prove the negligence of driver of the vehicle and this fact is considered by the Tribunal. Moreover additional premium was paid for insurance of driver and owner. Hence, Claimants are entitled for Rs.1,00,000/- as per that premium policy. Learned Counsel for Respondents/Claimants relied on decision of the Hon'ble Apex Court in **Divisional Manager, United India Insurance Company Ltd. Vs. Vijaya**, reported in (2018 (0) Supreme (Bom) 2909) and **RamKhiladi & Anr. Vs. United Insurance Company Ltd.**, reported in (2020 (0) SCC 7).

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claim Tribunal, Solapur (for short "the Tribunal"). Admittedly, accident had occurred due to negligence of the deceased. The Claimants are legal heirs of the deceased. The Tribunal has awarded Rs.1,84,500/- as compensation. The Tribunal has held that under Section 163(a) of the MV Act, no negligence is required to be proved. The insurance policy is at Exhibit-21. This policy shows that additional premium is paid for driver and owner. Hence, in my opinion, as per additional premium, the Claimants are entitled for Rs.1,00,000/-. The Hon'ble Apex Court in the cases cited by learned counsel for Respondents/Claimants has held that if additional premium

amount is paid, the claimants are entitled for the amount as per additional premium.

6. The Tribunal has awarded Rs.1,84,500/- as per additional premium amount, the Claimants are entitled for Rs.1,00,000/-, if this amount is deducted from compensation awarded by the Tribunal, the excess amount comes to Rs.84,500/-. The Appellants are entitled for this amount.

7. The facts of cited case by learned counsel for the Appellant and present case are different, hence, not applicable. In view of above, I pass following order:-

ORDER

- (i) The Appeal is partly allowed.
 - (ii) The Claimants are entitled for amount of Rs.1,00,000/- @ 9% interest, from the date of filing of the Claim Petition till realization of the amount.
 - (iii). The Appellant is permitted to withdraw amount of Rs.84,500/- along with accrued interest thereon, if not withdrawn by the Claimants.
 - (iv). The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it.
8. Pending Applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)