

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1367 OF 2016

The New India Assurance Co. Ltd.

Having Office Karad Branch Through
Mumbai Regional Office-I, New India
Bhavan, 2nd Floor, 34/38, Bank Street,
Fort, Mumbai-400 023.

(Ori.Opponent No.2)

...Appellant

Versus

1. Vishwas Rajaram Suryvanshi,
Aged about 43 years, Occu.: Service (Ori.Applicant No.1)
2. Ninad Vishwas Suryvanshi,
Aged about 19 years, Occu.: Education

Both Resident of Nevari,
Taluka-Kadegaon, Dist. Sangli,
Now Residing at Patrakarnagar,
Sangli, Dist. Sangli. (Ori.Applicant No.2)
3. Vikas Babaso Patil,
Aged about 40 years, Occu.: Service,
R/o. Bichud, Taluka-Walva, Dist. Sangli. (Ori.Opponent No.1)
4. Nandkumar Balvant Kamble,
Aged about 32 years, Occu.: Driver,

Resident at Vangi, Taluka-Kadegaon,
District-Sangli.

(Ori.Opponent No.3)

...Respondents

Mr. Sandeep S. Jinsiwale for the Appellant.

Mr. Ramdas A. Shelke for the Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th April, 2023.

JUDGMENT :

1. The issues involved in this Appeal are pay and recovery Order passed by the Tribunal and application of wrong multiplier.

2. Learned Counsel for the Appellant submits that at the time of accident, the driver of offending vehicle was not holding valid and effective driving license and it was proved before the Tribunal. In spite of that, the Tribunal has passed pay and recovery Order, which is not proper. He further submits that the Tribunal has applied multiplier of 16, it should be 15, as the deceased was 38 years old. Hence, requested to allow the Appeal.

3. Learned Counsel for the Claimants/Respondent Nos. 1 and 2 submits that at the time of awarding the compensation, the Tribunal has considered all the aspects and on that basis, the compensation is

awarded. No interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned Counsel. Perused the Judgment and award passed by the Motor Accident Claims Tribunal, Sangli (for short 'the Tribunal').

5. While dealing with the issue of pay and recovery order, the Tribunal has observed that the driver of Mini Bus was not holding a valid and effective driving license at the time of accident and on that basis, he passed pay and recovery order. The said order is not challenged by the owner of the offending vehicle. It is settled principle of law that if the driver was not holding valid and effective driving license at the time of accident, there is a liability of Insurance Company to pay the compensation to the Claimants and recover it from owner of offending vehicle. Order passed by the Tribunal is proper.

6. In respect of issue of multiplier, at the time of death, the deceased was 38 years old. The Tribunal has applied multiplier of 16, it should be 15. Hence, I am considering multiplier of 15. If the calculations are done by applying multiplier of 15, the excess amount

comes to Rs. 1,41,000/-. The Appellant is entitled for this amount. In view of above, I pass following order :

ORDER

- i. Appeal is partly allowed.
- ii. The Appellant is permitted to withdraw Rs. 1,41,000/- along with accrued interest thereon, out of deposited amount.
- iii. The Claimants/Respondent Nos. 1 and 2 are permitted to withdraw remaining amount along with accrued interest thereon.
- iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon.
- v. The parties are at liberty to withdraw the amount as per rule.
- vi. Appeal is disposed of.
- vii. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)