

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.664 OF 2014

1. Harunrasid Abdulkarim Khan,
2. Rasbunisha Harunasad Khan,
Residing at Room No.768 behind
Yashraj Hospital, Kamla Raman
Nagar, Bainganwadi, Govandi
Mumbai – 400 043. ... Appellants

Versus

1. M/s. STC.ETC-Mae(JV)
(P0000032005)
Plot No.20, Modi Compound,
Ghopedeo X Road No.1,
Mumbai – 400 010.
2. New India Assurance Co. Ltd.
87, M.G. Road, Fort,
Mumbai – 400 023. ... Respondents

Mr. T. J. Mendon for the Appellants.

Mr. Milind Vasant More for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

Oral Judgment :

1. Heard learned counsel for the Appellants and learned counsel for the Respondents.

2. By way of this Appeal, the Appellants-claimants are seeking enhancement of compensation.

3. It is contention of the learned counsel for Appellants that while awarding the compensation, the Tribunal has considered that the claimants are entitled for compensation of Rs.2,70,000/- by applying multiplier of 15. But while awarding compensation, the Tribunal has awarded Rs.1,00,000/- which is improper. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Insurance Company that there was negligence of grandfather of deceased in the said accident, who allowed the deceased-boy to go off the footpath and he did not take proper care of him, so deceased child went on road beyond the footpath and accident was occurred. Considering these facts the Tribunal has awarded proper compensation and no interference is required in it.

5. I have heard both the learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

6. While considering compensation, the Tribunal has considered notional monthly income of the deceased-boy at Rs.3,000/-, thereafter he comes to the conclusion that the claimants are entitled for compensation of Rs.2,70,000/-. But while passing order the Tribunal has considered that there was negligence of the grandfather of the deceased-boy. The claimants

are entitled for compensation of Rs.1,00,000/- and on that basis, the Tribunal has passed the order.

7. In my view, while passing the order, the Tribunal has not applied his mind and he has mechanically passed the order. When the Tribunal comes to conclusion that the claimants are entitled for a particular amount and when the Claim Petition was filed under Section 163(A) of the Motor Vehicle Act, so question of negligence would not arise. The claimants are entitled for whole amount considered by the Tribunal and I pass following order:-

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for amount of Rs.1,70,000/- @ 7.5 per annum from the date of filing of Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company is directed to deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of this order.
- (iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE,J.)