

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 996 OF 2013

1. Radhika Dattatray Kapile
Age : 46, Occupation : Household
2. Rohit Dattatray Kapile
Age : 22, Occupation : Education
3. Dhiraj Dattatray Kapile
Age : 19, Occupation : Education
4. Rakhi Dattatray Kapile
Age : 21, Occupation : Education,

All R/o : Kusumagraj Co-op. Housing Society,
Sadguru Nagar, Dawkharwadi, Nashik Road,
Nashik

.... Appellants

Versus

1. Shadatkhan Ganikhan
Age : Major, Occupation : Business,
R/o : Ibrahim Nagar, Ghata Billod,
District Indore (MP)
2. The Divisional Manager
Oriental Insurance Co. Ltd.
Merchant Chambers, Shalimar Chowk, Nashik

.... Respondents

.....

Mr. Pradeep J. Thorat a/w. Ms. Aditi Naikare and Mr. Rushikesh S. Kekane, Advocate for the Appellants.

Ms. Poonam Mital, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. This appeal is preferred by appellants/claimants against the Judgment and Order passed by Motor Accident Claims Tribunal, Nashik (for short “**the Tribunal**”).

2. It is the contention of learned counsel for the appellants/claimants that the Tribunal has considered income of deceased at Rs.1,58,000/- per year which is on lower side. Income tax returns were filed on record to show that deceased was getting more than considered income. He further submitted that the Tribunal has exonerated the Insurance Company from paying compensation as there was breach of terms and condition of the insurance policy which is not proper hence, requested to allow the appeal. Respondent No.1 served through paper publication but none appears for Respondent No.1.

3. It is the contention of learned counsel for respondent No.2 - Insurance Company that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence. Hence, Insurance Company is not liable to pay the compensation and the order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal. To prove the income of deceased claimants have examined PW-1 Radhika Kapile, wife of deceased at Exhibit-27. She has stated that at the time of accident her husband was working as a Secretary / Recovery Officer at Nashik District Co-operative Society and he used to file income tax returns. Nothing elicited in her

cross examination. Income tax returns are at Exhibit-26. Form -16 issued in the name of deceased shows that the gross salary of deceased for year 2007-08 was Rs.2,08,616/-. The Tribunal has considered the gross salary at Rs.1,58,000/- which is not proper and I am considering the salary at Rs.2,08,616/- which is mentioned in Form-16. The Tribunal has not awarded the consortium amount as per the view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹ each claimant is entitled for Rs.44,000/- as consortium amount and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. It appears from record that there is breach of terms and condition of insurance policy. It is settled law that if there is breach of terms and condition of insurance policy the Insurance Company is liable to pay compensation to the claimants and recover it from the owner of the vehicle.

5. Considering the above, the claimants are entitled for following compensation:

Sr. No.	Particulars		Entitlement
1	Annual Income Rs.208616-861(tax)	Rs.	2,07,755.00
2	Future Prospects (15% of Rs.2,08,616/-)	Rs.	31,163.00
	Total	Rs.	2,38,918.00

¹ 2018 ACJ 2782 (SC)

3	1/4th Deduction towards personal expenses	Rs.	59,729.00
	Total	Rs.	1,79,189.00
4	Rs. 1,79,189/- 11(Multiplier)	Rs.	19,71,079.00
5	Consortium (Rs.44,000/x 4 (claimants))	Rs.	1,76,000.00
6	Funeral Expenses	Rs.	15,000.00
7	Loss of Estate	Rs.	16,500.00
	Compensation Payable	Rs.	21,78,579.00
	Less :Compensation awarded by Tribunal	Rs.	11,68,674.00
	Enhanced Amount	Rs.	10,09,905.00

6. In view of above, I pass following order :

ORDER

- (i) The appeal is allowed.
- (ii) The appellant Nos.1 to 4 /claimants are entitled for enhanced amount of Rs.10,09,905/- @ 7.5% interest per annum from date of filing claim petition till realisation. Out of this amount, Rs. 2,07,500/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.
- (iii) The respondent No.2 - Insurance Company shall deposit Rs.21,78,579.00 along with accrued interest thereon before the Tribunal within six weeks from the

receipt of the order and recover it from owner of the offending vehicle.

- (iv) The claimants are permitted to withdraw the amount deposited by the respondent No.2-Insurance Company along with accrued interest thereon.

7. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

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SATISH
KILAJE

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