

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.810 OF 2019

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|--------------------------------------|-----------------|--|
| 1. Sharda Jaisingh Rathod |) | |
| Aged about 54 years, mother of |) | |
| deceased |) | |
| 2. Rahul Jaisingh Rathod |) | |
| Aged about 25 years, brother of |) | |
| deceased, | | |
| All residing at Hari Nagar, | | |
| Bhagirathi Chawl, Jogeshwari (east), |) | |
| Mumbai. |)....Appellants | |

Versus

- | | | |
|--|---------------------------|--|
| 1. Jaya Vishnu Rathod |) | |
| Aged about 31 years, widow of the |) | |
| deceased, residing at Hari Nagar, |) | |
| Bhagirathi Chawl, Jogeshwari (east), |) | |
| Mumbai |)....Respondents | |
| | (original applicant No.1) | |
| 2. Laxmidash Sivaji Bhanushali |) | |
| At Baru, Post Tera, Tal Abdasa, District |) | |
| Kutch, Gujarat |)....original | |
| | opposite party | |
| 3. The New India Assurance Company Ltd. |) | |
| RO 1, The New India Bhawan, Bank, |) | |
| Street, Fort, Mumbai |)....original | |
| | insurer | |

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Ms. Varsha Chavan, for Appellants.
Mr. D. S. Joshi, for the Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH 2023.

JUDGMENT:

1. The issue involved in this Appeal is that the Tribunal has not awarded the compensation for which the claimants are entitled.

2. It is contention of learned Counsel for the Appellant that while awarding compensation the Tribunal has held that the claimants are entitled for compensation of Rs.12,30,000/-. But, the claim Petition of the claimants was for Rs.10,00,000/-. Hence, the Tribunal has awarded Rs.10,00,000/- only. Learned Counsel further submits that, it is settled principle of law that if, the claimants are entitled for more compensation and claim Petition was for particular amount it cannot be ground to award that much amount only. Learned Counsel further submits that the Tribunal has awarded amount for funeral expenses and loss of estate on higher side and amount for consortium awarded on lower side, it be awarded.

3. It is contention of learned Counsel for the Respondent-

insurance company that the claimants have not made amendment in the claim Petition about enhanced amount. While awarding the compensation, the Tribunal has considered all the aspects. Moreover, the Tribunal has awarded Rs.25,000/- for funeral expenses and Rs.25,000/- for loss of estate and Rs.1,00,000/- for loss of consortium which is on higher side. Hence, requested to dismiss the Appeal.

4. I have heard both learned Counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal'). While disposing of the claim Petition, the Tribunal has observed that the Applicants are entitled to sum of Rs.12,30,000/- by way of compensation. However, the Applicants have restricted their claim to Rs.10,00,000/-. They did not seek any amendment in the claim Petition for enhancing amount of compensation. Hence, the Applicants are entitled to sum of Rs.10,00,000/- as claimed by them. I am unable to understand the reasoning given by the Tribunal for restricting the compensation at Rs.10,00,000/-.

5. It is settled principle of law that, if claimants are entitled for more compensation than claimed, the Tribunal has power to

award the said compensation. Section 168 of Motor Vehicle Act states about just compensation when on the basis of evidence on record, the Tribunal come to conclusion that claimants are entitled for compensation of Rs.12,30,000/-, it should have been awarded. Hence, I hold that the claimants are entitled for Rs.12,30,000/- as compensation amount.

6. The Tribunal has awarded Rs.25,000/- for funeral expenses and Rs.25,000/- for loss of estate and Rs.1,00,000/- for loss of consortium total of it comes to Rs.1,50,000/-. As per 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. 40,000/- with 10% increased i.e. Rs.44,000/- as consortium amount, there are three (3) claimants, total of it comes of Rs.1,32,000/- and Rs.16,500 for loss of estate and Rs.16,500/- for funeral expenses. Total of it comes Rs.1,65,000/-. If, amount awarded by the Tribunal i.e. Rs.1,50,000/- deducted from this amount, it comes to Rs.15,000/-. Total enhancement of compensation comes to Rs.2,45,000/-, the claimants are entitled for this amount.

1. 2018 ACJ 278 (SC)

7. In view of above, I pass following order.

O R D E R

- i. Appeal is allowed.
- ii. The claimants are entitled for enhanced amount of Rs.2,45,000/- @7.5% from filing of the claim Petition till realization of the amount.
- iii. The Respondents are directed to deposit the enhanced amount along with accrued interest within four (4) weeks after receipt of the order.
- iv. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- v. Pending Applications, if any, disposed of.

(SHIVKUMAR DIGE, J.)