

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1694 OF 2019

The New India Assurance Co. Ltd. }
RO-II, Jeevan Seva, 2nd Floor, }
Santacruz (W), Mumbai-400 054 } **...Appellant**

Versus

1. Shri.Laxman Govind Dungahu }
2 Mrs Hirabai Laxman Dungahu }
Both R/at Anna Bhau Sathe Nagar, }
Sadguru Krupa Chawl, Ghatkopar }
Link Road, Mankhurd, }
Mumbai-400 043. }

3. Shri.Sher Khan Jumer Khan }
R/at Sasun Navghar Post Kaman, Tal. }
Vasai, District-Thane-400 601 } **...Respondents**

WITH

FIRST APPEAL NO.1695 OF 2019

The New India Assurance Co. Ltd. }
RO-II, Jeevan Seva, 2nd Floor, }
Santacruz (W), Mumbai-400 054 } **...Appellant**

Versus

1. Mrs.Jayshri Shahu Kamble }
R/at Anna Bhau Sathe Nagar, }
Sadguru Krupa Chawl, Ghatkopar }
Link Road, Mankhurd, }
Mumbai-400 043. }

2. Shri.Sher Khan Jumer Khan }
R/at Sasun Navghar Post Kaman, Tal. }
Vasai, District-Thane-400 601 } **...Respondents**

Ms.Poonam Mittal, for the Appellant.
Mr.T.J. Mendon, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6 APRIL 2023

JUDGMENT :-

. The issue involved both these Appeals are dishonor of cheque which were given as a premium of insurance policy. As issue in both Appeal is same, I am deciding these Appeals by this common judgment.

2. It is contention of the learned counsel for the Appellant that the cheque which were issued by the owner of offending vehicle as a premium of insurance policy were dishonored. The notice's were given to the owner of the offending vehicle about dishonor of cheque and cancellation of the insurance policy as well as intimation's were given to the RTO office. The said fact was argued before the Tribunal but it was not considered and the impugned judgment and order is passed. Hence, requested to allow the Appeal's.

3. The learned counsel for the Respondent-Claimant's submits that no witness was examined to prove that the cheque's were dishonored and notices were given to the owner of the offending vehicle and intimation's were given to the RTO Office.

The Tribunal has considered all the facts and passed legal and valid order.

4. The learned counsel further submits that while calculating the compensation the Tribunal has applied wrong multiplier of 16 it should be 18 in both Appeals. The consortium amount is awarded on lower side. Hence, requested to award proper consortium.

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

6. While dealing with the issue of dishonor of cheque. The Tribunal has observed that the Insurance Company has raised the defense that on the date of accident policy was not in existence because cheque's by which the premiums were paid by the opposite party were dishonored. But the Insurance Company has not chosen to examine any witness to substantiate their contention. On this grounds and other grounds the Tribunal has allowed the Claim Petition. I do not find any infirmity in it.

7. In my view, if there is specific defense of the Appellants before the Tribunal that the cheque's were dishonored then it should have been proved before the Tribunal by leading

appropriate evidence, but it was not done. Hence, I do not see merit in the contention of the learned counsel for the Appellant that the Tribunal has not considered this fact.

8. At the time of the accident deceased was 20 years old while calculating the compensation the Tribunal has applied multiplier of 16 it should be 18 hence I am considering multiplier of 18. In both the Appeals the Tribunal has considered monthly income of deceased at Rs.3,000/- per month. The one half amount is deducted from personal expenses it comes to Rs.1,500/-, if this amounts calculates Rs.1,500/- X 12 X 18 it comes to Rs.3,24,000/-. The Tribunal has not awarded consortium amount. Rs.10,000/- is awarded for funeral expenses. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***¹, each claimants is entitled for Rs.40,000/- consortium, Rs.15,000/- for funeral expenses and Rs.15,000/- loss of estate. Total of it comes at Rs.1,10,000/-. So total compensation comes to Rs.4,34,000/- in both Appeals by deducting Rs.10,000/- for funeral expenses.

9. In both Appeals the Tribunal has awarded compensation of Rs.2,98,000/-, if this amounts deducts from the amount considered by this Court it comes to Rs.1,36,000/-. In Appeal No.1695 of 2019 there are two Claimants. They are

¹ 2018 ACJ 2782 (SC)

entitled for Rs.1,36,000/-. The Claimants are entitled for this additional amount.

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

ORDER

(i) Both Appeals are dismissed. No order as to cost.

(ii) The Claimants in Appeal No.1694 of 2019 are entitled for additional amount of Rs.1,36,000/- @ 7.5% per month from the date of the filing Claim Petition till realization of the amount out of this amount Rs.1,10,000/- is consortium amount.

(iii) The Claimants in Appeal No.1695 of 2019 are entitled for additional amount of Rs.1,36,000/- @ 7.5% per month from the date of the filing Claim Petition till realization of the amount out of this amount Rs.1,10,000/- is consortium amount.

(iv) The Claimants are entitled interest of 7.5% on consortium amounts in both Appeals from 1 November 2017 till realization of the amount.

(v) The Appellant is directed to deposit additional amount along with accrued interest in both Appeals, within six weeks after the date of receipt of the order.

(vi) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(vii) The statutory amount be transmitted to the Tribunal in both the Appeals. The parties are at liberty to withdraw it.

(viii) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)