

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

FIRST APPEAL NO. 1897 OF 2013

National Insurance Company Limited)
Mumbai Regional Office)
5th Floor, Sterling Cinema Building,)
65, Murzban Street, Fort)
Mumbai – 400 0001)....Appellant

Versus

1. Baliram Shantaram Patil)
Age : 45 years, Occu: Business)
Orig. Applicant No.1

2. Smt. Kamlbhai Baliram Patil)
Age: 40 yers, Occu: Household)
Orig. Applicant No.2

Both the applicants residing at :)
Diva Kavne, Post – Kalher)
Tal: Bhiwandi)

3. Prabhvir Gurunath Bhoir)
Kewani Dive, Tal: Bhiwandi)
P. O. - Kalher, Dist: Thane)
Orig. Opposite Party No.1
....Respondents

Mr. Nikhil Mehta i/b KMC Legal Venture for the Appellant.
Mr. Rohan Darandale for the Respondent Nos.1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this appeal is that at the time of accident rider of the motorcycle was not holding effective and valid driving licence.

2. It is contention of learned counsel for the Appellant that deceased was the pillion rider on the motorcycle. The rider of the motorcycle was not holding valid driving licence but this fact is not considered by the tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that Appellant has not examined any witness, to prove that, the rider of the motorcycle was not holding effective and valid driving licence. The order passed by the tribunal is legal and valid. Learned counsel further submitted that the tribunal has awarded consortium amount on lower side, it be awarded.

4. I have heard both learned counsel. Perused judgment and award passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal").

5. In respect of the issue of driving licence of the motorcycle rider, the tribunal has observed that the Appellant has not produced evidence on record to prove that the rider of motorcycle was not holding effective and valid driving licence. The tribunal further observed that rider of the motorcycle though, charged under Section of Indian Penal Code and Motor Vehicle Act but, he was not charged under Sections 3, 28 and 128 of Motor Vehicle Act, 1988 for not possessing valid driving licence. On that basis tribunal has observed that, it is not proved that rider of motorcycle was not holding driving licence at the time of accident. I do not find any infirmity in it. The tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**. each claimant is entitled for Rs.40,000/- for consortium amount and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. There are two claimants so, total amount comes to Rs.1,10,000/-. If amount awarded by the tribunal for consortium is deducted from the compensation amount considered by this Court it comes to Rs.75,000/-. The claimants are entitled for enhanced amount of Rs.75,000/-.

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

ORDER

- i. Appeal is dismissed.
- ii. The Claimants are entitled for enhanced amount of Rs.75,000/- @ rate of interest 7.5% per annum from 1st November, 2017 till realization of the amount.
- iii. The Appellant shall deposit the enhanced amount along with interest within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)