

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

FIRST APPEAL NO.178 OF 2000

The New India Assurance Co. Ltd. }
(Summons may be served on the Branch }
Manger) }
Hutatma Smriti Mandir Dufferin Chowk, }
Solapur. }

...Appellant

Versus

1. Nafisabanu Anwarmiya Ptel }
R/at 129/2, Shukrawar Peth, Tujapur, }
District-Osmanabad. }

2. Abdul Jabbar Mohamad Kasim Shaikh }

3. Kutejabegum Abdul Jabbar Shaikh }
Both R/at Outside Shahganj, H. No.8136/2, }
Near Mitte Pani Bawadi, Beedar, }
District-Bidar }

4. Vilaskumar Thanmal Palresha }
R/at A/7, Scico Apartments, Yerwada, Pune }

5. Bhausahab Suryabhan Kale }
R/at Chandannagar, Taluka-Haveli, }
District-Pune. }

....Respondents

Ms.Poonam Mital, for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4 MAY 2023

JUDGMENT :

. The issue involved in this Appeal is the deceased was

gratuitous passenger.

2. It is contention of the learned counsel for the Appellant that the deceased was traveling in the truck as gratuitous passenger. But this fact is not considered by the Tribunal and has awarded exorbitant and excessive compensation.

3. Though notices are served on Respondents, none present for the Respondents. Appeal is of the year 2000. Hence, I am deciding this Appeal on merit.

4. I have heard learned counsel for the Appellant. Perused judgment and order passed by the MACT, Solapur (for short 'the Tribunal').

5. It is contention of the learned counsel for the Appellant that the deceased was travelling as a gratuitous passenger in the offending vehicle. To prove this defense the Appellant has not examined any witness if specific defence was taken by the Insurance Company it needs to be proved by examining witness. It is not proved before the Tribunal that the deceased was gratuitous passenger. I do not see merit in the contention of the learned counsel for the Appellant that deceased was gratuitous passenger. The order passed by the Tribunal is proper and I do not find any infirmity in it and I pass following

order.

ORDER

- (i) The Appeal is dismissed. No order as to costs.
- (ii) The Claimants are permitted to withdraw deposited amount along with accrued interest.
- (iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.
- (iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)