

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

FIRST APPEAL NO. 900 OF 2018

The New India Assurance Co. Ltd.)
 Divisional Office No. 140400,)
 Vishwas, 728 A, Near Lathiya,)
 Darbar Company, Andheri- Kurla Road)
 Sakinaka, Mumbai- 400 072. Through its Legal)
 Hub – situated at 41-B, 4th Floor, Maker Tower E,)
 Cuffee Parade, Mumbai – 400 005.)

Ins. Policy No. is Annexed hereiwith)
 Validity from 08.12.2006 to 07.12.2007)....Appellant

Versus

1. Dipti Bharat Shah)
 Age: 46 years, (wife of deceased))

2. Foram Bharat Shah)
 Aged: 18 years, (daughter of the deceased))
 Both residing at 310, Valchand Complex,)
 90 ft. Road, Bhayander (W), Dist. Thane.)

3. Rupeshkumar Kujisahu)
 Pandurang Joshi Chawl,)
 Sambhaji Nagar, Kold Dongri,)
 Sahar Road, Andheri (East))
 Mumbai – 400 069)....Respondent

Ms. Poonam Mittal for the Appellant.
 Ms. Amrin Khan i/b Adv. A. M. Gokhale for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this Appeal is compensation awarded under other heads are on higher side.

2. It is contention of learned counsel for the Appellant that Tribunal has awarded Rs.1,00,000/- to Claimant No.1 for loss of consortium, Rs.1,00,000/- to Claimant No.2 for loss of care and guidance and Rs.25,000/- is awarded for funeral expenses, these are on higher 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.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Hence, requested to calculate the compensation. As per the view of Hon'ble Apex Court in the case of **MAGMA** (*supra*) and allow the Appeal.

3. Learned counsel for the Respondents/Claimants submit that while awarding compensation, the Tribunal has considered all the aspects on that basis compensation is awarded. No interference is

required in it.

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

5. The Tribunal has awarded Rs.2,25,000/- as a consortium amount and funeral expenses. As per the view of Hon’ble Apex Court in the case of **Magma** (supra) each claimant is entitled Rs.48,000/- as consortium. There are two claimants, the total comes to Rs.96,000/- and Rs.18,000/-for funeral expenses and Rs.18,000/- for loss of estate so total comes to Rs.1,32,000/-, if this amount deducts from the amount of Rs.2,25,000/- considered by the Tribunal, it comes to Rs.93,000/-, the Appellant is entitled for this amount.

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

ORDER

- i. The appeal is partly allowed.
- ii. The appellant is permitted to withdraw Rs. 93,000/- along with proportionate interest out of deposited amount.
- iii. The Claimants are permitted to withdraw the balance amount along with proportionate interest.

iv. The statutory amount be transmitted to the tribunal, Mumbai along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. All pending interim applications are disposed of.

(SHIVKUMAR DIGE, J.)