

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 111 OF 2019**

**The Iffco Tokio General Insurance
Company Ltd.**

AFL House, 2nd Floor, Lakbharati Complex,
Marol Maroshi Road, Andheri (E),
Mumbai – 400 059

....Appellant

Versus

1. Smt. Bhagyashri Ganesh Gaikwad

2. Mrs. Sangita Shivaji Gaikwad

All R/at – Kondiwade, Nane
Tal – Maval, District - Pune

3. Mr. Laxman Ramchandra Gogawale

R/at – A- 1/27, R/No. 1, Sector No. 21,
CIDCO Colony, Turbhe,
Navi Mumbai, Maharashtra

....Respondents

Mr. Vikrant Purashurami a/w Rama Naik, Advocate for the Appellant.
Mr. Uday B. Nighot, Advocate for the Respondent Nos. 1 to 3.

CORAM : S. G. DIGE, J.

DATE : 3rd March, 2023

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short

the Tribunal), the Appellant Insurance Company preferred this Appeal.

2. Brief facts of the case are as under:-

On 15th May 2010, Sakharam Gaikwad was riding the motorcycle bearing No. MH-14/BD-9975 and deceased Ganesh was a pillion rider on said motorcycle. At the time of incident, Sakharam was crossing Mumbai-Pune road for going towards Kamshet. At the relevant time, the Respondent No.1 drove his rickshaw bearing No. MH-43/C-1989 in rash, excessive and negligent manner and thereby dashed to the motorcycle. Because of dash, Sakharam and deceased fell down on road, sustained multiple injuries. Deceased Ganesh sustained head injury. Ganesh died while taking treatment. The offence was registered against the Respondent No.1 rickshaw driver.

3. The Claimants filed Claim Petition for getting compensation before the Tribunal. The Tribunal has passed judgment and order, it is under challenge. It is contention of learned Counsel for the Appellant that the Respondent No.1 drove the offending rickshaw outside the jurisdiction and thereby violated the terms and conditions of the permit. Therefore, the Appellant is not liable to pay any compensation to the Claimants.

4. The permit to ply offending rikshaw was for Thane district only. The incident had happened outside Thane district.

5. The learned Counsel further submits that the Claimant No.1-wife of deceased Ganesh remarried after the death of Ganesh. Hence, she is not entitled for the compensation and income of deceased is considered on higher side. Hence, requested to allow the Appeal.

6. It is contention of learned Counsel for the Respondent-Claimants that the offending rickshaw had permit to drive the rickshaw. No witness is examined by the Appellant to prove that there was breach of terms and conditions of permit before the Tribunal.

7. The learned Counsel further submits that, when Ganesh died, at that time, the Claimant No.1 was widow and thereafter she filed Claim Petition for getting compensation. At the time of death of her husband, she was 19 years old only. Hence her remarriage cannot be a ground to deny compensation to her. The learned Counsel further submits that deceased was getting Rs.10,000/- per month from doing the welding work and from agricultural land. But the Tribunal has considered only Rs.5,000/- per month. Hence, requested to dismiss the Appeal.

8. I have heard both learned Counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short the Tribunal). The Tribunal has awarded compensation of Rs.10,89,754/-.

9. While dealing with issue of breach of permit, the Tribunal

has observed that it is settled position that breach of terms and conditions of policy are quite different than the breach of terms and conditions of permit issued by the RTO Authority. The permit was issued for the purpose of plying the rickshaw and giving the service within the District Thane. However, it does not preclude the Opponent No.1 to carry the rickshaw out of the jurisdiction of District Thane. I do not find any infirmity in it. In my view the Appellant's have not examined any witness to prove that taking offending rickshaw outside the jurisdiction of Thane District was breach of terms of permit, and it amount's to breach of terms and conditions of insurance policy. Hence, I do not see merit in the contention of learned Counsel for appellant that there was breach of terms and conditions of insurance policy.

10. In respect of, issue of remarriage of Claimant No.1, in my view, it appears from record that at the time of death of her husband, she was 19 years old. Thereafter, she filed a Claim Petition for getting compensation, during pendency of the Claim petition she re-married. One cannot expect that for getting compensation of deceased husband, the widow has to remain widow for life time or till getting compensation. Considering her age, and at the time of accident, she was wife of deceased, is sufficient ground that she is entitled for the compensation. Moreover after death of husband remarriage can not be a taboo to get a compensation.

Section 166 of Motor Vehicles Act states about who can file Application for Compensation.

“Section 166. - Application for Compensation – 1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made -
(a) by the person who has sustained the injury; or
(b) by the owner of the property; or
(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or -----”

This section provides that by all or any legal representative of deceased can file application for compensation. The Claimant No. 1 was wife of deceased at the time of accident being legal representative she filed application for compensation, which is legal.

11. In respect of income of deceased, it has come on record that the deceased was doing fabrication work and he was also getting income from agricultural field, and he was getting income at Rs.10,000/- per month. Considering the evidence on record, the Tribunal has considered Rs.5,000/-per month as monthly income of deceased. I do not find any infirmity in it. In my view, no evidence was produced on record in respect income from fabrication work. The income from agricultural work can be considered as supervisory income. Hence, notional income considered by the Tribunal is proper.

12. It is contention of learned Counsel for the Respondents/Claimants that the Tribunal has not awarded consortium amount, amount for funeral expenses and loss of estate.

13. It is contention of learned Counsel for the Appellant that the Claimants have not preferred Appeal for enhancement of compensation. They are not entitled for any enhancement without any Appeal. In my view Section 168 of Motor Vehicles Act states

about just compensation. The consortium amount is being awarded to the legal heirs of deceased on the basis of parental consortium, spousal consortium and filial consortium. The Claimants are entitled for consortium amount. Hence, I am considering the consortium amount. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd V/s. Nanu Ram***¹, each Claimant is entitled Rs.40,000/- as consortium amount. There are three Claimants. So they are entitled for Rs.1,20,000/- as consortium and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Total comes to Rs.1,50,000/-.

14. The Tribunal has awarded amount of Rs.70,000/- for funeral expenses, loss of love and affection and consortium. If this amount is deducted from amount considered by this Court, it comes to Rs.80,000/-. The Claimants are entitled for Rs.80,000/-.

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

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The Claimants are entitled for Rs.80,000/- as additional amount @ 7.5% per annum from 1 October 2017 till realization of the amount.
- iii. The Appellant is directed to deposit the additional amount along with accrued interest thereon within four weeks, after

¹ 2018 ACJ 2782

receipt of this order.

- iv. The Claimants are permitted to withdraw the additional amount along with accrued interest thereon.
- v. The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- vi. All pending Civil Applications, if any, are disposed of.

(S. G. DIGE, J.)