IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1089 OF 2015

The New India Assurance Co. Ltd. Having Office At Satara, District-Satara, Thr. Mumbai Regional Office-I, New India Bhavan, 2nd Floor, 34/38, Bank street, Fort, Mumbai-400 023.	}	(Org. Opponent No.2) **....Appellant**

Versus

1. Maya Yeshwant Ballal Age-34 years, Occ : Nil	}	
2. Kum. Reshma Yeshwant Ballal Age-10 years, Occ : Education	}	
3. Dilip Yeshwant Ballal Age-11 years, Occ : Education Respondent Nos.2 and 3 being minor, Thr. G.A.L. mother Respondent No.1	}	
All above R/o. Nagthane, Taluka & District-Satara.	}	
4. Bhagabai Maruti Ballal Age-60 years, Occ : Nil R/o. Patan, Taluka-Patan, District-Satara	}	(Respondent Nos.1 to3 are the Original Applicants/ Claimants and Respondent Nos.4 to 6 are the Original Opponent Nos.1,3 and 4)
5. Maruti Yeshwant Ballal Age-65 years, Occ : Nil R/o. Patan, Taluka-Patan, District-Satara	}	

6. Kashinath Pandurang More }
Age-Adult, Occ : Transport, }
R/o. Moregaon, District-Satara. } **....Respondents**

Mr.Sandeep Sharad Jinsiwale, for the Appellant.
Mr.Vaibhav R. Gaikwad a/w Mr.Atharva R. Bingardive, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th FEBRUARY 2024

ORAL JUDGMENT :

. The issue involved in this Appeal is pay and recover order passed by the Tribunal.

2. It is contention of the learned counsel for the Appellant that, deceased was travelling in offending vehicle as a fare paying passenger. There was breach of Terms and Conditions of the Insurance Policy. The Tribunal should have exonerated the Insurance Company from paying compensation. The Tribunal has passed pay and recover order, which is erroneous. The learned counsel further submitted that, the Tribunal has awarded future prospects on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for Respondent-

Claimant that, while passing judgment and order the Tribunal has considered all the aspects on that basis order is passed which is legal and valid. No interference is required in it.

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

5. While dealing with the issue of awarding compensation the Tribunal has observed that, the deceased was travelling in the offending vehicle as fare paying passenger. There is breach of Terms and Conditions of the Policy. Hence Insurance Company shall pay the compensation and recover it from the owner of the vehicle. I do not find infirmity in it.

6. In my view, the Hon'ble Apex Court in the case of ***Manuara Khatun & Ors vs Rajesh Kr. Singh & Ors[1],*** has held that, if there is breach of Terms and Conditions of the Insurance Policy in respect of the fare paying passenger, the Insurance Company shall pay the compensation amount and recover it from the owner of the vehicle. At the time of the accident deceased

1 2017(4) SCC 796

was 40 years old. The Tribunal has awarded 30% future prospects, it should be 25%. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2]**,** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering these calculations the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.5,000.00
Annual Income (Notional Income X 12 months)	Rs.60,000.00
1/4th Deduction	Rs.45,000.00
(+) Future Prospects (25%) Rs.11,250.00	Rs.56,250.00
Multiplier 15 Rs.56,250 x 15	**Rs.8,43,750.00**
Consortium (5 Claimants) Rs.48,000 X 5	(+)Rs.2,40,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Loss of Income	**Rs.11,19,750.00**
Tribunal already awarded (-)	(-)Rs.11,43,000.00
Extra Amount	**Rs.23,250.00**

2 2018 ACJ 2782 (SC)

7. The total comes to Rs.11,19,750/-, if this amount deducts from Rs.11,43,000/-, the compensation awarded by the Tribunal, it comes to Rs.23,250/-, which is an excess amount. The Appellant is entitled for this amount.

8. In view of above I pass following order.

ORDER

(i) The Appeal partly is allowed.

(ii) The Appellant-Insurance Company is permitted to withdraw Rs.23,250/- with proportionate interest out of the deposited amount.

(iii) The Claimant's are permitted to withdraw the balance amount along with proportionate interest.

(iv) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per Rules.

(v) The Appellant is at liberty to recover compensation amount from Respondent No.6-owner of the offending vehicle as fixed by the Tribunal.

(vi) Pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)