

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

FIRST APPEAL NO. 592 OF 2018

H.D.F.C. Ergok General Insurance Co. Ltd.)
Head office at, Leela Business Park,)
6th floor, Andheri Kurla Road, Andheri,)
Mumbai- 400 059)....Appellant

Versus

1. Shakuntala Mahadeo Tate,)
Age: 42 years, Occu: Household,)

2. Mahadeo Gopinath Tate,)
Age: 48 years, Occ: Agril,)

Both R.at Kewadi,)
Tq. Tuljapur.,)....Respondents
(Claimsnts)

Mr. Abhijit Kulkarni a/w Mr. Gaurav Shahane, Advocate for the Appellant.

Mr. R. S. Alange, Advocate for the Respondent Nos. 1 & 2..

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th JANUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is breach of terms and

condition of Insurance Policy.

2. It is contention of learned counsel for the Appellant that at the time of accident driver of offending vehicle was not holding effective and valid driving licence, but this fact is not considered by the Tribunal. Learned counsel further submits that the Tribunal has considered monthly income of deceased on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants. To prove the defense, Appellant/Insurance Company has not produced any evidence on record. The deceased was working with Aditya Pharmaceutical as Quality Controller and he was getting salary of Rs.10,500/- per month but, the Tribunal has considered monthly income of deceased at Rs.8,820/-, which is proper. Hence, requested to dismiss the Appeal.

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

5. To prove its defense, the Appellant has not produced any evidence on record to show that at the time of accident, driver of offending vehicle was not holding effective and valid driving licence. Hence, I do not see merit in it. To prove the income of deceased, the Claimants examined the Claimant no.1, she has stated that deceased was serving with Aditya Pharmaceutical as Quality Controller and he was getting salary of Rs.10,500/- per month. In support of evidence of PW-1 the Claimants have examined PW-2 Supriya Moholkar, Manager of Aditya Pharmaceutical Company, she has stated that deceased was working in their company and he was getting salary of Rs.10,500/- per month.

6. Considering evidence on record and after deducting income tax from Rs.10,500/-, the Tribunal has considered monthly salary of deceased at Rs.8,820/-. I do not find infirmity in it.

7. Considering above reasons, Appeal is devoid of merit and, I pass following order.

ORDER

- i. Appeal is dismissed.
 - ii. The Claimants are permitted to withdraw the deposited amount along with proportionate interest.
 - iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - iv. Appeal is disposed of.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)