

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

FIRST APPEAL NO. 400 OF 2023

1. Smt.Rupam Mahesh Kotha } Age-33 Years, Occ : Household } } 2. Rutuja mahesh Kotha } Age-14 years, Occ : Education } (Applicant No.2 being minor represented } through Applicant No.1) } Both R/at Solapur, District-Solapur }	...Appellants
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Versus

1. Mr.Madhav Kundayya Kondale } Age-Major, Occ : Business } R/o. 9/102, Ravivar Peth, Solapur, District- } Solapur, At present Survey No.11, Nitiraj } Bunglow, Krishna Nagar, Road No.2, New } Sangavi, Pune-411 027. }	
2. HDFC Ergo General Insurance Co. Ltd., } Pune, Thr. Its Branch Manager, } First Floor, Kanale Plaza, Dafrin Chowk, } Solapur. }	...Respondents

Mr.R.S. Alange, for the Appellants.
 Mr.Sarthak S. Diwan, for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is dismissal of the Claim Petition.

2. It is contention of the learned counsel for the Appellant-Claimant that, the Claim Petition was filed under Section 163A of the Motor Vehicles Act, but the Claimant had shown income of deceased more than Rs.40,000/- per year. The Claimant's were intending to convert the said Petition under Section 166 of the Motor Vehicle Act (for short 'M.V. Act'), but due to mistake of the Advocate the same Application was not filed within reasonable time on that ground the Tribunal has dismissed the Claim Petition, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent No.2-Insurance Company that, the Tribunal has considered all the aspects while passing judgment and order. Hence, no interference is required in it. The learned counsel further submitted that, when income of deceased was more than Rs.40,000/- per year. The Claim Petition under Section 163A is

not maintainable. The order passed by the Tribunal 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 ('The Tribunal' for short), Solapur.

5. While dismissing the Claim Petition in Paragraph No.11 of the impugned order the Tribunal has observed that, the Claim Petition is preferred under Section 163A of the M.V. Act, the income of the insured-the Claimant or the deceased should not be more than Rs.40,000/- per year. If the income of the insured the Claimant or the deceased is more than Rs.40,000/- per year, in such case the Claimant may convert the Claim under Section 166 of the M.V. Act. If the Claim Petition is not converted the same is required to be dismissed. The Tribunal further observed that, in other Claim Petition out of the same accident the Claimant's Petition was under Section 163A of the M.V. Act but, later on it was converted into under Section 166 of the M.V. Act., but this petition is not converted. Hence, the Tribunal has dismissed the Claim Petition of Appellant-

Claimants.

6. In my view, the Claimant No.1's occupation is shown as household and the Claimant No.2 is 8 years old. The Claimants may not be aware about provisions of law. The Advocate representing them should have taken efforts for conversion of Claim Petition from 163A to 166 of the M.V. Act. But he did not take care of it and Claim Petition is dismissed. The Motor Accident Claims Act is beneficial legislation. In present case death of the deceased is caused due accident, it is not disputed by the Insurance Company. The mistake of Advocate cannot be a ground to suffer the Claimant's. The Companion Petition out of the same accident is converted under Section 166 of the M.V. Act. Considering these facts, I find it fit case to remand the matter to the Tribunal for fresh hearing.

7. The learned counsel for the Respondent-Insurance Company submits that, if this Court is inclined to remand the matter the Claimant's are not entitled for the interest period from the date of the order passed by the Tribunal till this date.

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

ORDER

- (i) The Appeal is allowed.
- (ii) The judgment and order passed by the Motor Accident Claims Tribunal, Solapur is quashed and set aside.
- (iii) The matter is remanded back for fresh hearing before the MACT, Solapur.
- (iv) The Claimant's are permitted to file the Application for conversion of Claim Petition under Section 166 of the M.V. Act, if they desire the said Application be decided on its own merit.
- (v) The date of the accident is 13th June 2009. The Tribunal is requested to dispose of the Claim Petition as early as possible, preferably within six months after conversion under Section 166 of the M.V. Act.
- (vi) If the Claimant's succeeds in the Claim Petition they are not entitled for the interest on compensation amount for the period of from 23rd August 2017 to

31st January 2024.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)