

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

FIRST APPEAL NO. 1194 OF 2016

ICICI Lombard General Insurance Co. Ltd.)
Through its authorized representative)
Mr. Prathamesh Dinde)
having its office at Peninsula House, 4th Floor,)
Dr. D. N. Road, Fort, Mumbai- 400 001)....Appellant
(Ori. Opp. Party No.1)

Versus

1. Pratik Dattatraya Mote)
Age: 5 years, Occ: Education)
Applicant No.1 being minor through)
G.A.L. Respondent No.2)

2. Hanumant Nana Mote)
Age: 28 years, Occ: Agriculture)

3. Nana Krishna Mote)
Age: 65 years, Occ: Nil)

4. Jayshree Nana Mote)
Age: 65 years, Occ: Nil)

All R/o. at Dhangarwadi, Post Shirval,)
 Taluka Khandala, District: Satara)

5. M/s. S. R. S. Travels)
 Prop. K. T. Rajshekar)
 At: 321, T. S. P. Road,)
 Opp. B. M. C. Kalasipalyam)
 Bangalore – 560 002)....Respondent

(Present Res. Nos. 1 to 4
 being original Applicant &
 present Respondent No.5
 being original opp. Party
 No.1 respectively.)

 Mr. Rajesh Kanojia i/b Res Juris, Advocate for the Appellant.
 Mr. Yuvraj P. Narvankar, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is deduction of compensation amount for personal expenses.
2. It is contention of learned counsel for the Appellant/Insurance Company that the Tribunal has deducted $\frac{1}{4}$

amount for personal expenses. The Claimant No.2, the brother of the deceased is major. He cannot be considered as dependent of the deceased but, this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that while passing the order, the Tribunal has considered all the aspects and on that basis, the judgment and order is passed. No interference is required in it. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded.

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

5. While calculating the compensation, the Tribunal has deducted $\frac{1}{4}$ amount for personal expenses. It is contention of learned counsel for the Appellant/Insurance Company that the Claimant No.2, who is brother of the deceased is major and he is doing agricultural work hence, he cannot be considered as dependent of the deceased. I find substance in the contention of learned counsel for the Appellant that Claimant No.2 is already engaged in agriculture

work and he is major so, he cannot be considered as dependent of the deceased hence, I am considering 1/3 amount for personal expenses instead of 1/4 as held by the Tribunal. The Tribunal has awarded Rs.50,000/- under the non pecuniary head. 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.

6. Considering the above calculations the claimants are entitled for compensation of Rs.28,32,000/- if this amount deducts from the amount awarded by the Tribunal i.e. Rs.31,33,500/- it come to Rs.3,01,500/- it is excess amount. The Appellant is entitled for this amount.

Loss of dependency	Rs.13,000/-
Future Prospects	Rs.6,500/-
Deduction towards personal expenses	Rs.1/3rd i.e. Rs.6,500/-
Multiplier 17	
Total in pecuniary Compensation	Rs.26,52,000/-
Consortium amount (Rs.48,000/- X3 Claimants)	Rs.1,44,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total	Rs.28,32,000/-
Less enhanced by the Tribunal	Rs.31,33,500/-
Excess amount	Rs.3,01,500/-

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

ORDER

- i. Appeal is partly allowed.
 - ii. The Appellant/Insurance Company is permitted to withdraw the amount of Rs.3,01,500/- with proportionate interest out of the deposited amount.
 - iii. The Respondents/Claimants are permitted to withdraw the balance amount with proportionate interest.
 - iv. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)