

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

FIRST APPEAL NO. 465 OF 2023

- | | |
|--|---|
| 1. Mrs.Dayaben Jayesh Koli | } |
| Age-31 years, Occupation-Housewife | } |
| (Widow of the deceased) | } |
| | } |
| 2. Mr.Girdhar Malji Koli | } |
| Age-64 years, Occupation-Retired, | } |
| Father of the deceased | } |
| | } |
| 3. Mrs.Dahiben Girdhar Koli | } |
| Age-62 years, Occupation-Housewife | } |
| Mother of the deceased | } |
| Appellant Nos.1 to 3 is residing at A/202, | } |
| Arihant Complex Building, Ram Mandir | } |
| Road No.01, Near Viva College, Taluka- | } |
| Vasai, District-Palghar, Pin-401303. | } |

**...Appellants
(Original
Applicants)**

Versus

- | | |
|---|---|
| 1. Mr.Harseh Manick Patil, | } |
| Add At !/25, Shanti Niwas, Umelman, | } |
| Near Hanuman Mandir, Vasai-West, | } |
| District-Palghar, Pin-401 202 (Owner of | } |
| Vehicle No.MH-48-BH-3309) | } |
| 2. The New India Assurance Company | } |
| Limited | } |
| Thr. Its Manager, Having Their Address | } |
| At- 2 nd Floor, Pinak Galaxy, Kapurbavdi | } |
| Naka, Dist-Thane, Pin-400 604 (Insurer | } |
| of MH-48-BH-3309) | } |

**...Respondent
No.1/Original
Opponent No.1**

**...Respondent
No.2/Original
Insurer**

Ms.Rina Kundu, for the Appellant.

Ms.Karishma Jhaveri i/b Navdeep Vora & Associates, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. By this Appeal, the Appellant is seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant that, the accident occurred due to sole negligence of the driver of the offending car, but the Tribunal has considered 25% contributory negligence of the deceased which is not proper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that, while passing order the Tribunal has considered all the aspects and on that basis judgment and order is passed. Hence, 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), Thane.

5. It is Claimant's case that on 15th June 2020, the deceased was returning home on his motorcycle bearing registration No.MH-48-W-8246. On Mumbai-Ahmedabad Highway, he was riding the scooter at 1.00 p.m. when he was in front of fountain hotel, the offending car bearing registration No.MH-48-BH-3309 which was behind the scooter of deceased made an attempt to overtake the scooter of the deceased and at that time gave dash to the deceased. Due to said dash deceased sustained multiple injuries and while taking treatment he died.

6. While dealing with the issue of negligence the Tribunal has observed that accident was as a result of contributory negligence. Hence the Tribunal has considered 75% contributory negligence of the driver of the offending car and 25% of deceased. I am unable to understand the observations of the Tribunal as admittedly the offence was registered against the driver of the offending car. The spot panchnamma shows that, the car had given dash to the scooter of

deceased. It appears from the police papers that, the driver of offending car had tried to overtake the scooter of deceased and in that attempt, he gave dash to the scooter of deceased, but this fact is not considered by the Tribunal. Moreover, to prove the negligence of deceased, driver of the offending car did not step into witness box. Considering these facts, I hold that accident occurred due to sole negligence of the driver of the offending car.

7. The learned counsel submitted that, there are three Claimant's, but the Tribunal has awarded consortium to the Claimant No.1 only. As per view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹, each Claimant is entitled for Rs.48,000/- as consortium amount. The two Claimant's are entitled for Rs.96,000/- as consortium amount. Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. The Tribunal has considered monthly income of deceased at Rs.2,44,121/-, it is not disputed by the Claimant hence I am considering the same income.

8. In view of above calculations the Claimant's are

¹ 2018 ACJ 2782 (SC)

entitled for following compensation.

Particulars	Amount
Income of Deceased (Per annum)	Rs.2,44,121.00
(+) Future Prospect @ 50% of income	Rs.1,22,060.00
Total Income	Rs.3,66,181.00
Dependency Rs.2,44,121/- X 16 Factor	Rs.39,05,936.00
Consortium to Widow	Rs.44,000.00
Consortium to Parents (Rs.48,000/- X2)	Rs.96,000.00
Loss of Estate	Rs.16,500.00
Funeral Expenses	Rs.16,500.00
Total	Rs.40,78,936.00
Tribunal Awarded	Rs.30,07,000.00
Enhanced Compensation	Rs.10,71,936.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimant's are entitled for enhanced amount of Rs.10,71,936.00 @ 7.5% per annum from date of the filing of the Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.

- (iv) The Claimant's are permitted to withdraw the deposited amount alongwith interest.
- (v) The statutory amount be transferred to the Tribunal, Thane along with interest. The parties are at liberty to withdraw it.
- (vi) All pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)