

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.980 OF 2024
IN
FIRST APPEAL (ST) NO.19112 OF 2023

Chanda Nirbhay Shah And Anr. ..Applicants

IN THE MATTER OF BETWEEN

The New India Assurance Co. Ltd. ..Appellant

Vs.

Chanda Nirbhay Shah And Ors. ..Respondents

Mr. Mayank Tripathi i/by Mr. Bhushan Walimbe for the Applicants
/Respondents.

Mr. Devendranath S. Joshi for the Appellant.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 30th JANUARY 2024

P.C.:

1. This application has been filed by the original claimants who had filed M.A.C.P No.109 of 2021 under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of the accidental death of their son. By the judgment dated 29th March 2023, the learned Member of the Motor Accident Claims Tribunal, Kolhapur awarded a sum of Rs.1,62,70,000/- with interest as compensation. The Insurance Company has challenged the aforesaid award in Appeal.

2. We have heard the learned counsel for the Applicants-original claimants as well as the learned counsel for the Insurance Company. We have also perused the impugned award. We find that the award passed by the Tribunal has been mainly challenged on the ground that the Tribunal has failed to consider the aspect of contributory negligence on the part of the deceased. Another ground of challenge is based on the quantum of compensation awarded to the claimants.

3. *Prima facie*, we find that there is sufficient evidence on record to support the findings recorded by the learned Member of the Tribunal that the death occurred on account of involvement of the truck that was insured by the Insurance Company and which was parked without any signal in a no parking zone. There is further evidence on record to indicate the income of the deceased. The multiplier 18 also appears to be rightly applied since the deceased was aged 25 years.

4. Thus, taking a *prima facie* of the matter, we are inclined to permit the claimants, who are parents of the deceased as well as senior citizens to withdraw an amount of Rs.80 lakhs from amount deposited by the Appellant. The claimants shall file an undertaking before the Motor Accident Claims Tribunal, Kolhapur stating therein that in case the Appeal preferred by the Insurance Company is allowed and the award passed by the Tribunal is set aside or the amount of the

compensation is reduced below the amount of Rs.80 lakhs they would make good the deficit amount on such terms, as the Court may direct.

5. It is clarified that the observations made in this order are only for considering the prayers for withdrawal of the amount. The Interim Application is disposed of in aforesaid terms .

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)

Corrected as per speaking to minutes of the order dated 2nd February, 2024