IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2490 OF 2011

The New India Assurance Co. Ltd.
Old Agra Road, Nashik,
Through Mumbai Regional Office – I,
New India Bhavn, 2nd Floor, 34/38,
Bank Street, Fort, Mumbai – 400 023. ....Appellant

V/s.

1. Kokila Vijay Jadhav
age – 39 years, Occ:- Household work,
2. Mahendra Vijay Jadhav,
age- 23 years.
3. Ashwini Vijay Jadhav,
age – 22 years.
4. Bhushan Vijay Jadhav,
Age- 19 years, All R/o. Parashram Bhivsan Patil, Matrudarshan Colony, near K. K. Wagh Clg, Panchavati, Nashik. ..... Respondent Nos. 1 to 4 Org. Applicant/ Claimants.
5. Sanjay Dhanraj Patil,
age 36 years, Occ:- Driver,
R/o. Mohagaon, Tal& Dist:Dhule,
6. Rupraj Dairy,
R/o. c/o. Pro. Rupraj Dairy,
Ashu Sadan Apartment, Anandnagar,
Tal:-Vasai, Dist: Thane. .....Respondent Nos. 5 to 6 Org. Opponent Nos. 1 to 2.

Mr. Sandeep S. Jinsiwale, for the Appellant.
Mr. Zia Ur Rehman a/w. Harshil Choubey i/b. Manoj Harit & Co. for the Respondent Nos.1 to 4.

GANESH SUBHASH LOKHANDE Digitally signed by GANESH SUBHASH LOKHANDE Date: 2024.02.27 11:10:25 +0530

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th FEBRUARY, 2024

ORAL JUDGMENT:-

1. The issue involved in this Appeal is liability of paying compensation.

2. It is contention of learned counsel for the Appellant-Insurance Company that deceased was travelling in the offending vehicle as friend of the Driver. He was gratuitous passenger. There was breach of terms and condition of insurance policy but this fact has not been considered by the Tribunal and has passed impugned order directing Insurance Company to pay the compensation to the Claimants which is erroneous. Learned counsel further submitted that as there was breach of terms and conditions of insurance policy, the Tribunal should have exonerated Appellant-insurance company from paying compensation. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Claimants that the deceased was friend of Driver of offending vehicle and to accompany him as a replacement Driver he was traveling in the offending

vehicle, hence he cannot be termed as gratuitous passenger. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Nashik ["**The Tribunal**" for short].

5. It is contention of learned counsel for the Respondent-Claimants that at the time of accident, deceased was 34 years old and appropriate multiplier is 16. The Tribunal has applied 13 which is wrong. Hence, I am applying multiplier of 16. Learned counsel further submitted that the Tribunal has adopted 1/3rd amount for personal expenses. There are four Claimants. It should be ¼th . Hence I am considering ¼th amount for personal expenses. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[1]***,*** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering these calculation's the Claimants are entitled

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for following compensation.

Particulars		Amount
Monthly Salary		Rs.3,000.00
Annual Income		Rs.36,000.00
Deduction Personal Expenses ¼ (Four Dependents)		Rs.9,000.00
Net Annual Income		Rs.27,000.00
Rs.27,000X 16 Multiplier		**Rs.4,32,000.00**
Consortium : 48,000.00 x 4	(+)	Rs.1,92,000.00
Funeral Expenses : 18,000.00		Rs.18,000.00
Loss of Estate : 18,000.00		Rs.18,000.00
Compensation Entitled		**Rs.6,60,000.00**
Awarded by Tribunal	(-)	Rs.3,47,000.00
Enhanced Amount		**Rs.3,13,000.00**

6. While passing order, the Tribunal has observed that the Appellant-Insurance Company failed to prove that deceased was travelling by paying fare in the offending vehicle. On that ground, the Tribunal has held that it was responsibility of the Insurance Company to pay the compensation. In my view, deceased was travelling in the offending vehicle which was commercial vehicle. It is Claimants' case that Deceased was travelling in that vehicle as a Friend of the milk tanker Driver, so, there is a breach of

terms and conditions of Insurance policy. The owner of offending vehicle is liable to pay compensation. It is settled principle of law, if there is breach of terms and conditions of the insurance policy, the Insurance Company has to pay compensation and recover it from the owner of offending vehicle. Hence, the insurance company shall pay the compensation to the Claimants and recover it from the owner of the vehicle.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Respondent is entitled ffor enhanced compensation of Rs.3,13,000/- @ 7.5 interest per annum from date of filing the claim Petition till realisation of the amount, out of this Rs.2,28,000/- is consortium amount. The Claimants are entitled @ 7.5% per annum on this amount from 1st November 2017 till realization of the amount.

(iii) The Appellant-Insurance Company shall pay the compensation to the Claimants as fixed by the Tribunal and enhanced compensation along with accrued interest thereon.

(iv) The Claimants are permitted to withdraw deposited amount alongwith accrued interest thereon.

(v) The Insurance Company is at liberty to recover the amount from Respondent No.6-Owner of the offending vehicle.

(vi) All pending Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)