

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

FIRST APPEAL NO.1531 OF 2014

New India Insurance Co. Ltd.	}	
MROI New India Bhavan, 2 nd Floor, 34/38,	}	(Org. Opp.
Bank Street, Fort, Mumbai-400 023.	}	No.2)
	}	...Appellant

Versus

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1. Shri.Ashok Shankar Pawar	}	
Age-35, Occ : Laboruer	}	
 2. Anusayabai Ashok Pawar	}	(Org. Claimant
Major, Occ : Labourer	}	Nos.1 and 2)
Both R/at Kolyachi Wadi, Sayyed Pimpri,	}	
Taluka & District-Nashik	}	
 3. Shri.Kailas Baburao Lilke	}	(Org. Opp.
Age-20, Occ : Driver,	}	No.1)
R/o. Kolyachi Wadi, Sayyed Pimpri,	}	
Taluka & District-Nashik	}	
 4. Shri.Sadashiv Dagdu Suryawanshi	}	(Org.Opp.
Age-35, Occ : Vehicle Owner,	}	No.2)
R/o-4610, Amrudham, Room No.2,	}	
Panchavati, Nashik-422 003.	}	...Respondents

Mrs.Urmila K. Sanil, for the Appellant.

Mr.Rahul D. Motkari a/w Ms.Manasi Pawar, for Respondent
Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th MARCH 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is Insurance Company is not liable to pay the compensation.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the driver who was not authorized to drive the vehicle entered into the offending truck and inserted a nail in the switch and drove it, due to which accident occurred. The Insurance Company is not liable to pay compensation, as the vehicle was not driven by the authorized person, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the driver of the offending vehicle was employed by the owner of the vehicle. The Tribunal has considered all the aspects while passing the judgment and order, hence, no interference is required in it. 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), Nashik.

5. While dealing with the issue of fixing liability the Tribunal has observed that the Opponent No.1 was driving the vehicle on the basis of an authority drawn from Opponent No.2. I do not find infirmity in it, as Appellant-Insurance Company has not examined Opponent No.1 as witness, to prove that he was not authorized to drive the vehicle. I do not see merit in the contention that Opponent No.1 had no authority to drive the offending vehicle. While awarding compensation the Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram¹***, 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. It comes to Rs.1,32,000/-.

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

1 2018 ACJ 2782 (SC)

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant's are entitled for enhanced amount of Rs.1,32,000/- @ 7.5% per annum from 1st November 2017 till realization of the amount.
- (iii) The Appellant-Insurance Company shall deposit enhanced amount along with accrued interest within six weeks after receipt of the order.
- (iv) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.
- (v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vi) The Claimant's shall pay Deficit Court Fees on enhanced amount.
- (vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)