

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1365 OF 2016

National Insurance Co. Ltd.
Jai Commercial Complex, J. K. Gram
Near Cadbury Company
Eastern Express Highway, Thane
Policy No. 253501/31/08/6100002470

Appellants
(Orig.Insurer)

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Versus

- 1 Smt. Yashodashekhar Shetty
Presently age 58 years (Wife of the deceased)
- 2 Kum. Supreet Shekhar Shetty
Aged 24 years (Daughter of deceased)
- 3 Master Sumeet Shekhar Shetty
Aged 22 years (Son of the deceased)
All R/at 601, B Hermes Centre, Sector 17,
Vashi, Navi Mumbai-400703
- 4 Essdee Foundations & Constructions Pvt. Ltd.
1004, Mayures Cosmos, Sector 11,
CBD Belapur, Navi Mumbai, Dist. Thane
(Owner of vehicle No. MH-04-AS-4614)

... Respondents

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Mr. R.S. Vidyarthi a/w. Mohit Turakia i/b. Asim Vidyarthi, Advocate for Appellant.

Mr. T. J. Mendon , Advocate for Respondent Nos.1 to 3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 28th MARCH, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is, the deceased cannot be termed as third party as he was travelling in the offending vehicle as an

employee.

2. It is contention of learned counsel for the appellant that the deceased was employee, who was travelling in his office car. When deceased was travelling as an employee during the course of his employment, he cannot be termed as a third party, but this fact is not considered by the Tribunal, hence requested to allow the appeal.

3. It is contention of learned counsel for Respondent Nos.1 to 3/ claimants that the deceased was occupant in the car and the issue raised before this Court by the appellant was not pleaded in the written statement. Learned counsel further submitted that the insurance policy of the offending car was comprehensive policy. It includes the occupants of the car. The Tribunal has considered all the aspects while passing Judgment and Order and no interference is required in it. Learned counsel further submits that no evidence was led before the Tribunal by the appellant to prove the defence taken by them.

Learned counsel for respondent Nos.1 to 3 has relied on:

- (a) *Oriental Insurance Co. Ltd. Vs. Santosh Satish Kumar Garg and others (2010 ACJ 2477)*
- (b) *Royal Sundaram Alliance Insurance Co. Ltd. Vs. Meenakshi and others (2010 ACJ 2477)*

Learned counsel for respondent Nos. 1 to 3 submitted that the Tribunal has not awarded consortium amount to the claimants. There are

three claimants. As per the view of the Hon'ble Apex Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*, each claimant is entitled for Rs.48,000/- as a consortium amount. Total comes to Rs.1,44,000/-. The claimants are entitled for this amount.

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

5. It is contention of learned counsel for the appellant that the deceased (employee) who was traveling in the vehicle of employer cannot be termed as a third party. In my view, the policy of the offending vehicle was a comprehensive policy. It includes the occupants of the said car. This policy does not differentiate between the employee and the occupant. The employee come under the term of occupant as insurance premium for the occupant was already paid by the owner of the vehicle. Moreover, the issue raised in appeal was not pleaded in written statement of the appellant filed before the Tribunal hence, I do not see merit in the contention that employee cannot be termed as a third party/occupant. The Tribunal has not awarded consortium amount. As per view of Hon'ble Apex Court in the case of *Magma (Supra)* the three claimants are entitled for Rs.1,44,000/- as consortium amount.

6. In view of the above, I pass the following Order:

ORDER

- (i) The appeal is dismissed. No order as to cost.
- (ii) The respondent Nos.1 to 3 /claimants are entitled for consortium amount of Rs.1,44,000/- @ 7.5% interest per annum from 1st November 2017 till realisation of the amount.
- (iii) The appellant shall deposit the enhanced amount along with accrued interest within six weeks after receipt of the order.
- (iv) The claimant is permitted to withdraw deposited amount along with accrued interest thereon.
- (v) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- (vi) The learned counsel for the appellant seeks stay of the Order. The accident occurred in the year 2009, hence I am not inclined to grant stay.
- (vii) All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)