

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

FIRST APPEAL NO. 1046 OF 2022

Kotak Mahindra General Insurance Company)
 Zone-4, Kotak Infinity Building No.21)
 Infinity ITI, Park,)
 In front of Western Express Highway)
 General A. K. Vaidya Way, Dindoshi Malad (E))
 Mumbai 400051)....Appellant
 (Org. Res. No.2)

Versus

1. Tukaram Nathuram Savnekar)
 Age: 55 years)
 Residing at Zhalkhand, Post-Kamarle)
 Tal. Alibag, District: Raigad.)

 2. Kirti Tukaram Savnekar)
 Deceased through Lr's)

 2.1 Ichha Sachin Naik)
 Age: 34 years, Occ: Household)
 Residing at Satirje, Post: Kihim)
 Tal:- Alibag, District:- Raigad)

2.2 Kavita Sushant More)

Age: 32 years, Occ: Household)

Residing at Jalpada, Post:- Kamarle)

Tal: Alibag, District: Raigad)

3. Vishal Vijay Raje)

Age: 50 years, Occ: Service)

Residing at, Flat No.5 C-2 Building,)

Krishna Darshan Apartment)

Pimpalbhat, Alibag)

Tal: Alibag, District: Raigad)....Respondents

(Res. Nos. 1 & 2 are Org.

Claimant and Res. No. 3 is

3 is Orig. Res. No.1)

Mr. Sarthak S. Diwan, Advocate for the Appellant.

Mr. Sanjay Ghaisas, Advocate for the Respondent Nos.1 and Nos. 2.1 to 2.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is compensation awarded by the Tribunal is on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that deceased was bachelor but while awarding compensation the Tribunal has deducted 1/3 amount for personal expenses, it should be 1/2. Learned counsel further submitted that the Tribunal has awarded 50% amount as future prospects, deceased was driver and no evidence produced on record to show that deceased was permanent employee but, this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was working in Namita Logistics Company as employee and salary slip of the deceased and account of payments of salary slip are produced on record by PW-2 Dhananjay Dalvi. Learned counsel further submitted that the Tribunal has considered all the aspects while passing the order 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, Raigad at Alibag (for short “the Tribunal”).

5. Admittedly, at the time of accident deceased was bachelor but while awarding compensation the Tribunal has deducted 1/3

amount for personal expenses, it should be 1/2 hence, I am considering 1/2 amount for personal expenses. It is claimant's case that deceased was working as driver and thereafter, he shifted his job with Namita Logistics. To prove it, the claimants have examined PW-2 Dhananjay Dalvi Director of Namita Logistics, he has stated that deceased was working in their company. He produced the salary slip and account and documents of the salary slip of the deceased which is at Exhibit 47 to 53. From the evidence of PW-2 and documents produced on record, it shows that deceased was the permanent employee of Namita Logistics hence, I do not see merit in the contention that 50% future prospects awarded by the Tribunal to the Claimants is improper. After considering the 1/2 deduction from the total compensation, the excess amount comes to Rs.5,10,000/-. The Appellant/Insurance Company is entitled for this amount.

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

ORDER

- i. Appeal is partly allowed.
- ii. The Appellant/Insurance Company is permitted to withdraw the amount of Rs.5,10,000/- along with proportionate interest out of deposited amount.

- iii. The claimants are permitted to withdraw the balance amount with proportionate interest.
 - iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)