

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

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FIRST APPEAL NO. 466 OF 2023

The New India Assurance Co. Ltd.)
Having Office at : New India Assurance)
Building, 87, M. G. Road, Fort,)
Mumbai-400 001, Mumbai through Mumbai)
Legal Hub, 41-B, 4th floor, Maker Tower-E,)
Near World Trade Centre, Cuffe Parade,)
Mumbai-400 005)Appellant
(Orig. Opp. No.2)

Versus

1. Shambhavi Shaunak Kanhav)
Age about : 28 years, Residing at : 307,)
Building No.1, B. Wing, 3rd Floor,)
Narendra Camp, Vaishali Nagar,)
Dahisar-E, Mumbai,)
2. Ashok Milapchand Jain,)
B-26, Adinath Society, Pune-411037.)....Respondents

(Res. No.1 is the Orig.
Applicant/ Claimant and
Res. No.2 is the Org. Opp.
No.1).

Mr. Sandeep Sharad Jinsiwale, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th APRIL, 2024.

Oral Judgment :

1. The issue involved in this appeal is, the Claimant cannot be considered as a dependent.
2. It is contention of learned counsel for the Appellant/Insurance Company that Claimant is sister-in-law of the deceased. So, she cannot file claim petition on behalf of the deceased but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.
3. Learned counsel for the Respondent No.1/Claimant submits that no issue was raised before this Court nor this issue was mentioned in the written statement. Learned counsel further submitted that the Claimant was staying with the deceased in his family. Being legal representative, she can file the claim petition and requested to dismiss the Appeal.
4. I have heard both learned counsel. Perused judgment and

order passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”).

5. The issue raised before this Court was not taken as a defense before the Tribunal nor it was mentioned in the written statement hence, I do not see in the contention of learned counsel for the Appellant that Claimant cannot be considered as legal representative of the deceased.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. 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.)