IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1516 OF 2014

	The New India Assurance Co. Ltd. Having Office at Divisional Office, 2nd Floor, Nehru Memorial Hall, Camp, Pune-411 001 through Mumbai Regional Office-I, New India Bhavan, 2nd Floor, 34/38, Bank Street, Fort, Mumbai-400 023.	(Original Opponent No.2) ...Appellant
	Versus	
1	Ashok Govind Balgude Aged about 42 years, Occ : Service.	
2	Nanda Ashok Balgude, Aged about 36 years, Occ: Household, Both are resident at Varsoli, Tal-Maval, Dist: Pune.	...Orig. Applicants.
3	Umeshkumar Premnarayan Agarwal, Age : Adult, Occ: Service, Resident at B-Block club of Western India, Coyaji Road, Camp, Pune – 411 001.	...Orig Opponent No.1 ...Respondents

Mr. Sandeep S. Jinsiwale, Advocate for the Appellant.
Mr. Uday B. Nighot along with Ms. S. Patil, Advocates for the Respondent Nos.1 and 2/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th 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 the offending car was being towed by a crane. On the way, the nuts and bolts fastened to the offending car got away and the car was detached and it came down on the road and gave dash to the deceased. The accident occurred due to the negligence of the driver of the towing vehicle. An FIR was registered against the driver of the towing vehicle but this fact is not considered by the Tribunal and has fixed liability on the appellant-Insurance Company, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 and 2/claimants that the appellant- Insurance Company is the insurer of the car, which was detached from the towing vehicle, which gave dash to the deceased. The claim petition was filed under Section 163 of the Motor Vehicle Act, so no question of negligence arises. The judgment and order passed by the Tribunal is legal and valid. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

5. While passing the order, the Tribunal has observed that it is well settled law that in claim petition under Section 163A of the Motor Vehicles Act, it is not necessary to prove any fault or negligence on the part of the driver of the vehicle, only it is to be proved by the claimants

that the death of the deceased occurred due to the accident arising out of the use of motor vehicle. In the instant case, it has been shown that death of deceased occurred due to dash given by the offending car No.MH-12-CK-8747 and it was insured with the appellant – Insurance Company. I do not find infirmity in it. In my view, though the offence was registered against the driver of towing vehicle but death of the deceased is caused due to dash given by the car, the said car was insured with the appellant- Insurance Company. The insurance was in respect of death or injury caused due to car. Though the said car was not driven by any person but dash is given by the said car, which caused death. Hence, the appellant – Insurance Company is liable to pay the compensation.

The Tribunal has awarded consortium of lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are two claimants, the total comes to Rs.1,32,000/-. The Tribunal has awarded Rs.4500/- for funeral expenses and love and affection. If this amount is deducted from the amount considered by this Court, it comes to Rs.1,27,500/-. The claimants are entitled for this amount.

6. Considering the above reasons, I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.

2. The claimants are entitled for an enhanced amount of Rs.1,27,500/- towards consortium amount @ 7.5% per annum from 1st November 2017 till realisation of the amount.

3. The appellant-Insurance Company shall deposit the additional amount along with accrued interest thereon within six weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)