

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

FIRST APPEAL NO. 1686 OF 2013

1. Shri.Ganesh Anantha Dukare	}	
Age-30 years, Occ: Agriculturist	}	
	}	
2. Shri.Anantha Vithoba Dukare	}	
Age-54 years, Occ : Agriculturist	}	(Org.
Both R/at : Pargaon Tarfe, Ale, Taluka-	}	Opponents)
Junnar, District-Pune.	}	...Appellants

Versus

1. Sou. Sharda Suresh Atkari	}	
Age-35 years, Occ : Household	}	
2. Shri.Suresh Dattatray Atkari	}	
Age- 39 years, Occ : Agriculturist	}	
Both R/at Sultanpur, Post : Shirol,	}	
Taluka-Junnar, District-Pune.	}	...Respondents

Mr.Uday B. Nighot, for the Appellant.
Mr.C.M. Lokesh, for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are non-joinder of necessary party and maintainability of the Application under Section 163 of the M.V. Act.

2. It is contention of the learned counsel for the Appellant that, the Claimant's have not joined the owner and Insurer of the Motorcycle on which deceased was riding. The learned counsel further submitted that, the accident occurred due to negligence of the deceased, 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, while passing the order the Tribunal has considered all the aspects, no interference is require in it. The learned counsel further submitted that, at the time of the accident deceased was 19 years old. The Tribunal has applied multiplier 15 but it should be 18.

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

5. It is Claimant's case that on 27th May 2009 at about 11.30 a.m. the deceased was riding on motorcycle bearing registration No.MH-14-AJ-4288 from Belhe to Manchar side. The Claimant No.1 was pillion rider, at about 11.30 a.m.,

motorcycle bearing No.MH-14-T-2554 came from opposite direction and gave dash to the motorcycle of the deceased. There was collusion between the two motorcycles due to said dash deceased sustained injuries and died on the spot. The offence was registered against the deceased. The Claim Petition was filed by the Claimant's under Section 163A of the Motor Vehicle Act ('M.V. Act.' for short).

6. It is contention of the learned counsel for the Appellant that, the Claimant did not join the owner and insurer of the motorcycle on which he was riding. It is settled principal of law, it is choice of the Claimant's to claim compensation from any of the tortfeasor. Hence, I do not see merit in the contention that owner and insurer of the motorcycle on which deceased was riding were not added as a party.

7. It is contention of the learned counsel for the Appellant that contributory negligence of the deceased was not considered by the Tribunal. In my view, the Claim Petition was filed under Section 163A of the M.V. Act so no question of the considering negligence arises. Hence, I do not see merit in it.

8. At the time of the accident deceased was 19 years old. While calculating compensation the Tribunal has considered multiplier of 15 it should be 18. The Tribunal has considered monthly income of deceased Rs.3,000/- per month. After applying the multiplier of 18. The enhanced amount comes to Rs.54,000/-. I am considering this amount as compensation amount. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant's are entitled for enhanced amount of Rs.54,000/-.
- (iii) The Appellant-Insurance Company shall deposit enhanced amount within six weeks after receipt of the order. The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)