

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

**FIRST APPEAL NO.1663 OF 2013**

|                                                                                                                                                                                      |                                        |
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| <b>United India Insurance Co. Ltd.</b> }<br>Motor Third Party Hub }<br>Union Cooperative Insurance Building, }<br>5 <sup>th</sup> Floor, Sir P.M. Road, Fort, }<br>Mumbai-400 001. } | (Org. Insurer)<br><b>....Appellant</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|

***Versus***

|                                                                                             |                          |
|---------------------------------------------------------------------------------------------|--------------------------|
| <b>1. Mrs.Ujalawati Devi Subhash R Gupta</b> }<br>Wife of Deceased, Aged-30 years. }        | (Org. Applicant<br>No.1) |
| <b>2. Master Sunil Subhash Gupta</b> }<br>Son of deceased, Aged-14 years }                  | (Org. Applicant<br>No.2) |
| <b>3. Ms.Neelam Devi Subhash Chand Gupta</b> }<br>Daughter of the deceased, Aged-10 years } | (Org. Applicant<br>No.3) |
| <b>4. Master Sandeepkumar Subhash Chand Gupta</b> }<br>Son of deceased, Aged-12 years }     | (Org. Applicant<br>No.4) |
| <b>5. Ms.Neha Subhash Gupta</b> }<br>Daughter of deceased, Aged-5 years. }                  | (Org. Applicant<br>No.5) |
| <b>6. Master Nitesh Subhash Gupta</b> }<br>Daughter of the deceased, Aged-5 years }         | (Org. Applicant<br>No.6) |
| <b>7. Ramnath Kedarnath Gupta</b> }<br>Father of the deceased, Aged-65 years }              | (Org.Applicant<br>No.7)  |
| <b>8. Munkadevi Ramnath Gupta</b> }<br>Mother of the deceased, Aged-60 years }              | (Org. Applicant<br>No.8) |
| Applicant Nos.2 to 6 are minors Through }<br>Applicant No.1, next friend Natural }          |                          |

NILAM  
SANTOSH  
KAMBLE

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|---------------------------------------------------|---|-----------------------|
| Guardian and mother                               | } |                       |
| All Presently R/at Laxmi Baug, Near Tata          | } |                       |
| Power, Lohia Nagar, Dharavi, Sion,                | } |                       |
| Mumbai-400 022                                    | } |                       |
|                                                   | } |                       |
| Permant Address :                                 | } |                       |
| Village Akholia, Post-Shahpur,                    | } |                       |
| Tahsil-Domaryagunj                                | } |                       |
| District-Siddharth Nagar, U.P.                    | } |                       |
| <b>9. Seetadevi S. Vaishya</b>                    | } |                       |
| Shree Sai Mathura Co. Op. Hsg. Soc.               | } | (Org. Opposite Party) |
| Room No.18, 3 <sup>rd</sup> Floor, Pitamber Lane, | } | <b>...Respondents</b> |
| Mahim, Mumbai-400 016                             | } |                       |

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Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.  
Mr.Jitendra Gor, for the Respondents.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 7<sup>th</sup> FEBRUARY 2024**

### **ORAL JUDGMENT :-**

. The issue involved in this Appeal is deceased was gratuitous passenger in the offending vehicle.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, at the time of the accident deceased was traveling in the goods vehicle. It was breach of Terms and Conditions of the Policy. He was gratuitous passenger in the offending vehicle, 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-Claimants that, the deceased was selling photo frame. On the day of the accident, he was going with goods and material to sale by the offending vehicle, so he cannot be termed as gratuitous passenger. The order passed by the Tribunal is legal and valid 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 ('The Tribunal' for short), Mumbai.

5. To prove its case the Claimant examined, Claimant No.1 Ujalawati Gupta, she has stated that, her husband was selling photo frame by manufacturing the same in shop at Dharavi, Mumbai, she further stated that on the date of the accident her husband was going towards Pandharpur along with his goods and material to sell the same by offending tempo. Nothing elicited in her cross-examination.

6. While dealing with this issue the Tribunal has observed that, the Shop and Establishment licenses which is at

Exhibit-30 shows that deceased was doing the business of selling of photo frames and the copy of the Spot Panchnamma at Exhibit-24 shows that, after the accident photo frames were laying on the road, it corroborates the evidence of PW-1 on that ground the Tribunal has held that the deceased was going along with goods in the offending tempo. I do not find infirmity in it.

7. In my view, from the FIR it discloses that the goods including photo frames were lying scattered at the spot of incident. In copy of the Panchnamma at Exhibit-24 same fact is mentioned. It corroborates evidence of PW-1 that her husband was doing business of selling photo so it proves that at the time of the accident deceased was travelling in the offending vehicle as goods owner. So there is no breach of Terms and Conditions of the Insurance Policy. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*<sup>1</sup>, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of

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estate. There are eight Claimant's the total comes to Rs.4,20,000/-. The Tribunal has awarded Rs.20,000/- as Consortium amount, if it deducts from it, it comes to Rs.4 lakhs. The Claimant's are entitled for this amount.

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

### **ORDER**

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimant's are entitled for enhanced amount of Rs.4,00,000/- @7.5% interest per annum on this amount from 1<sup>st</sup> November 2017 till realization of the amount.
- (iii) The Appellant-Insurance Company shall deposit the enhanced amount along with interest within six weeks, after receipt of this order.
- (iv) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.
- (v) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty

to withdraw it, as per rule.

(vi) All pending Civil and Interim Applications are disposed of.

**(SHIVKUMAR DIGE, J.)**