

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

FIRST APPEAL NO.308 OF 2023

The New India Assurance Co. Ltd.	}	
Kalyan Divisional Office, Guru Govind	}	
Niwas, Murbad Road, Opp. Purnima	}	
Theathre, Kalyan-421 301	}	...Appellant

Versus

**NILAM
SANTOSH
KAMBLE**

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1. Shri.Ramashankar Ramavadh Pandey	}	
Age-69 years, Occ: Service	}	
2. Smt.Saraswati Ramashankar Pandey	}	
Age-67 years, Occ : Housewife	}	
3. Smt.Suman Vinod Pandey	}	
Age-46 years, Occ: Housewife	}	
4. Kum.Supriya Vinod Pandey	}	
Age-26 years, Occ: Student	}	
5. Kum. Priya Vinod Pandey	}	
Age- 21 years, Occ: Student	}	
6. Master.Ashutosh Vinod Pandey	}	
Age- 24 years, Occ: Student	}	
All R/at B-2, Uttam Apartments, Behind	}	
Sadhubela High School, Ulhasagar No.1,	}	
Dist-Thane-421 001.	}	
7. Smt.Pritiben Deepak Doshi	}	...Respondents
At Mahadev Shukla Compound, Mahim	}	(Resp. Nos.1 to 6
Road, Taluka : Palghar, Dist-Thane.	}	are Orgi.
(Owner of Lorry Bearing No.MH-04-P-	}	Applicant & Res .
877)	}	No.7 is Org. Op.
	}	Party)

Ms.Shalini Shankar, for the Appellant.

Mr.Yogendra Pendse a/w Mr.Amit Chaudhary, Ms.Priyanka Patkar, for Respondent Nos.1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are, income of deceased is considered on higher side and permit for offending vehicle was for Maharashtra State but accident occurred in Gujarat, but this fact is not considered by the Tribunal.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered monthly income of deceased at Rs.9,000/- per month, which is on higher side. The learned counsel further submitted that, the permit of the offending vehicle was to ply in Maharashtra State, but the accident occurred in Gujarat State. There was breach of Terms and Conditions of the Insurance Policy. But these facts are not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was Civil Engineer and he used to earn monthly income at Rs.9,000/- per month. He used to file Income Tax Returns. The income considered by the Tribunal is proper. The learned counsel further submitted that, to prove the defence taken by the Appellant in respect of permit, no evidence was produced before the Tribunal by the Appellant-Insurance Company. The judgment/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), Kalyan, District-Thane.

5. To prove the income of deceased the Claimant's have examined P.W.-1 the Claimant No.1 Suman Pandey at Exhibit-28. She has stated that, the deceased was owner of the company namely Associated Construction Company. He was Civil Engineer and earning Rs.9,000/- per month. In support of the evidence of P.W.-1, the Claimants have examined PW-2 Jaykumar Mohanprasad, Inspector of Income Tax. He has stated that, they

preserve the income tax returns for six years. Considering the evidence on record, the Tribunal has considered Rs.9,000/- per month as income of deceased. I do not find infirmity in it.

6. In my view, it has come on record that deceased was Civil Engineer and he used to file Income Tax Returns, the Tribunal has considered, monthly income of deceased at Rs.9,000/- with future prospects, so it comes to Rs.6,000/- per month. Hence, I do not find infirmity in it.

7. In respect of the issue of permit of the offending vehicle the Appellant-Insurance Company has not produced any evidence before the Tribunal to show that offending vehicle had permit for plying in Maharashtra only. Hence, I do not see merit in it.

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

ORDER

(i) The Appeal is dismissed.

(ii) The Respondents-Claimant's are permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest

thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per rule.

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

(SHIVKUMAR DIGE, J.)