

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 137 OF 2023

Bajaj Allianz General Insurance Co. Ltd.
Solapur Divisional Office, Solapur

....Appellant
(Org. Insurer)

TALLE
SHUBHAM
ASHOKRAO

Digitally signed by
TALLE SHUBHAM
ASHOKRAO
Date: 2024.02.21
18:43:56 +0530

Versus

1. Tejashri Mangesh Mane
Age 37 years, Occ-Household

2. Pavanraj Mangesh Mane
Age 17 years, Occ-Education

3. Vimal Hanumant Mane
Age 60 years, Occ-Household

4. Hanumant Ganpat Mane
Age 65 years, Occ-NIL Resp No. 2 being Minor
through Mother natural guardian Resp.No. 1

All above R/at Pavan Niwas, Sai Marg No.2,
Sangram Nagar, Akluj, Taluka Malsiras, Dist.
Solapur.

5. Mrs. Sudamati Gopal Ingale
Age-Adult, Occ-Business,
R/at Ujani (T), Taluka Madha, Dist. Solapur (Owner
of Tractor)

6. Mr. Manik Shrirang Parade
Age- Adult Occ-Business, R/at Sangram Taluka
Malsira, Dist. Solapur. (Owner of trolley)

7. United India Insurance Co. Ltd.
Divisional Office, Navi Peth, Solapur.

... Respondents.

Mr. D. S. Joshi, Advocate for the Appellant.
Mr. R. S. Alange, Advocate for the Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th FEBRUARY, 2024.

ORAL JUDGMENT. :

1. The issue involved in this appeal is the Tribunal has considered interest on the fixed deposit amount.
2. It is contention of learned Counsel for the Appellant that while awarding the compensation, the Tribunal has considered interest on fixed deposit amount as income of the deceased, which is not proper as, the fixed deposit amount would continue to the legal heirs of the deceased but, this fact is not considered by the Tribunal.
3. It is contention of learned Counsel for the Appellant that at the time of accident, the driver of offending vehicle was not holding effective and valid driving license. There was breach of terms and conditions of Insurance Policy. It was proved before the Tribunal, the Tribunal should have exonerated the Insurance Company but, has passed pay and recover Order, which is erroneous, hence, requested to allow the Appeal.

4. It is contention of learned Counsel for the Respondents/Claimants that the Tribunal has considered all the aspects while awarding the compensation, hence, no interference is required in it. Learned Counsel further submitted that the Hon'ble Apex Court in the case of *Vijay Kumar Rastogi Vs. Uttar Pradesh State Roadways Transport Corporation (AIR 2018 SC 819)* has held that interest on the fixed deposit amount can be considered as income of the deceased, hence requested to dismiss the Appeal.

5. I have heard both learned Counsel, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Solapur, (for short "the Tribunal").

6. Admittedly, at the time of accident the Driver of offending vehicle was not holding effective and valid driving license. Considering this fact, the Tribunal has passed pay and recover Order. I do not find infirmity in it. It is settled principal of law that, if there is breach of terms and conditions of Insurance Policy, the Insurer has to pay the compensation to the Claimants and recover it from the owner of the offending vehicle. Hence, I do not see merit in the contention that, the Order passed by the Tribunal is erroneous. While awarding the compensation the Tribunal has considered interest on the fixed

deposit amount as income of the deceased. I do not find infirmity in it. The Hon'ble Apex Court in the case of *Vijay Kumar Rastogi Vs. Uttar Pradesh State Roadways Transport Corporation (AIR 2018 SC 819)* has held that the interest on fixed deposit amount can be considered as income of the deceased.

7. In view of above, I pass following Order:-

ORDER

- a) The Appeal is dismissed. No Order as to costs.
- b) The Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- c) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

8. All pending Applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)