IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1750 OF 2010

1	Viju Dashrath Khulat Age : 32 years, Occu: Household.		
2	Vinod Dashrath Khulat, Age : 14 years, Occ: Student,		
3	Sachin Dashrath Khulat, Age : 12 years, Occu: Student,		
4	Kalpesh Dashrath Khulat Age : 9 years, Occu : Nil, (Appellant Nos.2,3 and 4 are minors, represented through their Mother i.e. Appellant No.1) All are residing at Velgaon, Khulat Pada, Post Manor, Tal-Palghar, Dist-Thane.	….	Appellants
	Versus		
1	Anil S. Raval, At Post Tarapur, Tal.-Palghar, Dist-Thane.		
2	The United India Insurance Co.Ltd. Krushna Kunj, 2nd Floor, Behind Bank of Baroda, Dahanu, Dist.Thane	…	Respondents

Mr. Shirshak R Chavanke, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for Respondent No.2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

<u>Oral Judgment :</u>

1. This appeal is preferred by the appellants/claimants against the dismissal of the claim petition.

2. It is contention of learned counsel for the claimants that the Tribunal has dismissed the claim petition on the ground that no evidence was produced on record to show that the deceased died due to negligence of the driver of the offending truck, which is erroneous. Learned counsel further submitted that at the time of accident, the deceased was travelling in offending truck as friend of the truck driver. The risk of passengers was covered under the insurance policy, but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that the Tribunal has considered all the aspects while passing the order. No negligence of the truck driver was proved before the Tribunal. Hence, requested to dismiss the appeal.

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

5. It is claimants' case that on 28th July, 2002, deceased Dashrath was proceeding from Chilhar Phata to Boisar by truck bearing No.MWT-3348. Near Velgaon, the driver of the truck lost control over the truck and dashed against the truck which was proceeding ahead. Due to dash, the deceased sustained severe injuries and he died while taking treatment. An offence was registered against the truck driver, in which, the deceased was travelling.

5.1. To prove the negligence, the claimants have examined claimant No.1-Viju Khulat. She has stated that the accident occurred due to sole negligence of the offending truck driver. In cross-examination, she admitted that her husband was not working with the owner of the offending truck, her husband boarded in the offending truck as a friend of the truck driver. The driver of the offending truck has not stepped into the witness box. While deciding the issue of negligence, the Tribunal has observed that there is no evidence on record to prove that the deceased died due to negligence of the driver of the offending truck, hence, the Tribunal has dismissed the claim petition. The Tribunal has observed that the deceased was not working on the offending truck. He boarded in that vehicle as a friend of the driver of the deceased. The deceased was gratuitous passenger. The truck was insured with respondent No.2, it was goods' vehicle. On these grounds, the Tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal. As admittedly, an offence was registered against the driver of the offending vehicle for the said accident. The driver of the offending vehicle did not step into the witness box to prove that the accident did not occur due to his negligence. At the time of the accident, the offending vehicle was insured with respondent No.2- Insurance Company. The policy is at Exhibit-27. This policy shows that premium was paid for seven passengers other than the driver. It shows that the insurance policy covered the passengers of the offending truck. The deceased was travelling in the said truck, it has not come on record that deceased was a gratuitous passenger or fare-paying passenger. As the insurance policy covered seven passengers and premium was paid for it, the Insurance Company is liable to pay the compensation. These facts are not considered by the Tribunal.

5.2. It is the claimants' case that the deceased was working as driver and he was earning Rs.5,000/- per month. Considering the evidence on record and as the claim petition is filed under Section 163-A of the Motor Vehicles Act, I am considering Rs.3,000/- per month as monthly income of the deceased.

5.3. In view of above, the claimants are entitled for following following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.3000/- pm x 12)	Rs.	36000.00
40% future prospects	Rs.	14400.00
Total	Rs.	50400.00
1/3rd deductions towards personal expenses	Rs.	16800.00
Total	Rs.	33600.00
(Rs.33600/- x 18 multiplier)	Rs.	604800.00
Consortium	Rs.	5000.00
Loss of Estate	Rs.	2500.00
Funeral Expenses	Rs.	2000.00
Total Compensation.		**614300.00**

6. In view of above, I pass the following order :

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for compensation of Rs. 6,14,300/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the compensation amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the compensation amount along with accrued interest thereon.
5. The claimants shall pay court fees on enhanced amount as per Rule.

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

(SHIVKUMAR DIGE, J.)