

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

FIRST APPEAL NO.691 OF 2016

The New India Assurance Co. Ltd., } Having Office at 307, Narayan Peth, } Opp. Vijay Talkies, Laxmi Road, Pune } Thr. Mumbai Regional Office-I, New } India Bhavan, 2 nd Floor, 34/38, Bank } Street, Fort, Mumbai-400 023. }	Appellant (Original Opponent No.3)
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Versus

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1. Mrs.Shweta Amit Khanse } Aged About 34 years, Occ : Household } 2. Aakash Amit Khanse } Aged About 12 Years, Occupation : } Student } 3. Shryas Amit Khanse } Aged About 12 years, Occupation : Nil } Aforesaid Respondent Nos.2 and 3 are } minors through Natural Guardian mother } Respondent No.1 herein } All R/at B1/2, Sundervan Residency, } Manikbaug. Sinhagad Road, Pune. } 4. Arvind Digamber Khanse, } Age : 73 years, Occ : Retired } 5. Mangal Arvind Khanse } Age-58 yers, Occ : Household } Both above Respondent Nos.4 and 5 R/o. } 35 Shivprasad Society, Panmala, Pune } 6. Satish Prabhakar Darekar } Age-45 yeras, Occ : Owner }	
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7. Akshay Satish Darekar	}	Respondents
Age-45 years, Occ : Owner	}	(R. Nos.1 to 5 are
Both above Respondent Nos.6 and 7	}	Org. Applicant/
R/at Chandan Bunglow, Plot No.9,	}	Claimants and R.
Siddhivinayak Society, Kothrud, Pune	}	Nos.6 and 7 are
	}	the Original
	}	Opponent Nos.1
	}	and 2)

Mr.Sandeep S. Jinsiwale, for the Appellant.

Mr.Vikramsingh Parmar, for the Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JANUARY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are, accident occurred due to sole negligence of the deceased and deduction of amount for personal expenses.

2. It is contention of the learned counsel for the Appellant that, the deceased, who was riding on motorcycle gave dash to the offending car. The accident occurred due to negligence of the deceased, but this fact is not considered by the Tribunal. The learned counsel further submitted that, there are five Claimant's but Tribunal has deducted 1/5th amount for

personal expenses, it should be 1/4th. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimant's that, when deceased was riding on motorcycle, at that time driver of the offending car drove the vehicle in high speed in rash and negligent manner and gave dash to the motorcycle of the deceased. The offence was registered against the driver of the offending car. The driver did not step into witness box to prove the negligence of the deceased. The order passed by the Tribunal is legal and valid. 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), Pune.

5. While dealing with the issue of negligence, the Tribunal has observed that, the FIR was registered against the driver of offending car. The spot panchnamma shows that, the accident occurred due to negligence of the driver of the offending car and no evidence was produced by the Appellant-Insurance

Company to prove the negligence of the deceased. I do not find infirmity in the observations of the Tribunal.

6. In my view, if Appellant-Insurance Company has taken a specific defence that, accident occurred due to negligence of the deceased. It is burden on the Appellant-Insurance Company to prove it by producing evidence but it was not done. Hence, I do not see merit in the contention that, the accident occurred due to negligence of the deceased. While awarding compensation, the Tribunal has deducted 1/5th amount for personal expenses. There are five Claimant's, it should be 1/4th. Hence, I am considering 1/4th for personal expenses. The Tribunal has given consortium amount of Rs.2,25,000/-, which is on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are five Claimant's. The total comes to Rs.2,76,000/-. As observed earlier an amount for personal

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expenses is considered 1/4th, the excess amount comes to Rs.1,46,000/-. After considering consortium amount and deducting the same amount from amount of personal expenses the excess amount comes to Rs.51,000/-. The Appellant-Insurance Company is entitled for this amount.

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Appellant is permitted to withdraw Rs.51,000/- along with proportionate interest out of the deposited amount.
- (iii) The Claimants are permitted to withdraw balance amount along with proportionate interest.
- (vi) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it.
- (vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)