

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**FIRST APPEAL NO. 40 OF 2018**

|   |                                                                                                                   |                  |                 |
|---|-------------------------------------------------------------------------------------------------------------------|------------------|-----------------|
|   | IFCO Tokiyo General Insurance Company<br>Having address at IFCO Tower, Plot No.3,<br>Sector 29, Gudgaon, Haryana. | )<br>)<br>)      | ...Appellant    |
|   | Versus                                                                                                            |                  |                 |
| 1 | Ramu Bapu Deshmukh<br>Age – 39 years, Occ – Service,<br>At-Post-Boargaon, Taluka-Surgana,<br>Dist-Nashik.         | )<br>)<br>)<br>) |                 |
| 2 | Jayram Ramdas More,<br>Age-Adult, Occ.-<br>At Khirude, Post-Boargaon,<br>Tal Kalwan, Dist-Nashik                  | )<br>)<br>)<br>) | ....Respondents |

Mr. Nitesh V. Bhutekar, Advocate for the Appellant.

Mr. Pritesh K. Bohade, Advocate for the Respondent No.1/claimant.

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 22nd JANUARY, 2024.**

**Oral Judgment :**

1. The issues involved in this appeal are accident occurred due to negligence of the deceased and the Tribunal has awarded compensation on higher side under non-pecuniary heads.

2. It is contention of learned counsel for the appellant-Insurance Company that the accident occurred due to sole negligence of the deceased as she was not properly sitting in the offending rickshaw. Learned counsel further submitted that the Tribunal has awarded an

amount of Rs.50,000/- for love and affection, Rs.50,000/- for miscarriage and Rs.25,000/- for funeral expenses, which are on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that while awarding compensation, the Tribunal has considered all the aspects. Hence, requested to dismiss the appeal.

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

5. It is the claimants' case that on 12<sup>th</sup> December 2012 around 11.30 am, deceased – Anita was travelling in autorikshaw bearing No.MH.41-B-0564. The driver of the said rickshaw was driving the rickshaw in high speed and in rash and negligent manner. Due to high speed, the said rickshaw turtled. Deceased – Anita sustained injuries and died due to the injuries. An offence was registered against the driver of the offending rickshaw. No witness was examined to prove the negligence of the deceased. Moreover, the deceased was traveling as a passenger, so there is no question of her negligence. I do not see merit in the contention of learned counsel for the appellant-insurance company that there was negligence of the deceased.

6. It is the contention of learned counsel for the appellant-insurance company that while awarding compensation, the Tribunal has awarded Rs.1,25,000/- under non-pecuniary heads, it is on higher side.

As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate. There is one claimant, total comes to Rs.84,000/-. If this amount is deducted from the amount of Rs.1,25,000/- awarded by the Tribunal, it comes to Rs.41,000/-. It is an excess amount. The appellant-Insurance Company is entitled for this amount.

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

**O R D E R**

1. The appeal is partly allowed.
  2. The appellant-Insurance Company is permitted to withdraw Rs.41,000/- along with proportionate interest thereon, out of the deposited amount.
  3. The claimants are permitted to withdraw the balance amount along with proportionate interest thereon.
  4. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. Pending applications, if any, stand disposed of.

**(SHIVKUMAR DIGE, J.)**