

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

FIRST APPEAL NO. 1199 OF 2023

- | | | |
|---|---|----------------|
| 1. Chitra Pandit Wagh |) | |
| Age: 32 years, Occ: Nil |) | |
| 2. Gayatri Pandit Wagh |) | |
| Age: 13 yers, Occ: Education |) | |
| 3. Yashwardhan Pandit Wagh |) | |
| Age: 12 years, Occ: Education |) | |
| Appellant No.2 & 3 through N. G. and |) | |
| Mother. Res. No. 1, since, being minor. |) | |
| 4. Shantabai Sahebrao Wagh |) | |
| Age: 71 years, Occ: Nil |) | |
| All R/o.: 106, Wagh Vasti, Adhegaon, |) | |
| Tal: Madha, Dist: Solapur |) |Appellants |

Versus

- | | | |
|---|---|---------------|
| 1. The C. E. O, Zilla Parishad, Solapur |) | |
| Zilla Parishad, Solapur-413001. |) | Orig. Oppos. |
| 2. The New India Assurance Co. Ltd. |) | |
| DO-II, Nehru Memorial Hall, |) | |
| Moledina road, Camp, Pune-1, |) | ..Respondents |

Mr. Amol Gatne i/b Ms. Swati Uday Mehta, Advocate for the Appellants.

Mr. Anand S. Kulkarni, Advocate for the Respondent No.1.

Mr. Himanshu takke i/b M. V. More, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. By this appeal, the Appellants/Claimants have challenged the judgment and order of dismissal of claim petition passed by the Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

2. It is contention of learned counsel for the Appellants that this Court by order dated 23rd March, 2023 had set aside the order passed by the Tribunal and remanded the matter for fresh hearing before the Tribunal on the ground of quantum of compensation. The tribunal has decided quantum of compensation but unnecessary gave the findings that the deceased stepped in the shoes of owner of vehicle and the deceased was travelling in the offending vehicle in the capacity as owner/borrower, on that ground claim petition is dismissed, which is erroneous. Learned counsel further submitted that this court had not directed the tribunal to give finding on this aspects. Learned counsel further submitted that in the other claim petition filed before the tribunal out of the same accident in that claim petition

the same tribunal has held that the offending car was driven by the driver Dilip Bhosle and not by the deceased. Hence, the tribunal ought to not have held that the deceased stepped in to the shoes of the owner as the said car was allotted to the deceased as Sabhapati and he was occupant in the said car. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that the offending car was allotted to the deceased being Sabhapati of Respondent No.1. The deceased was travelling in the said car in the capacity of owner/borrower. The tribunal has considered all the aspects while passing the judgment and order and no interference is required in it.

4. Learned counsel for Respondent No.1 submits that the appropriate order be passed. Learned counsel further submitted that at the time of accident the offending car was insured with the respondent no.2/insurance company.

5. I have heard all the learned counsels. Perused Judgment

and order passed by the Tribunal.

6. This court had remanded the matter to the tribunal for fresh hearing on the point of deciding issue of quantum only. As per the order of this Court, the tribunal has decided the point of quantum but while passing the order the tribunal has observed that deceased was travelling in the offending vehicle in the capacity of owner/borrower on that ground the tribunal has dismissed the claim petition. In my view, this Court had not directed the tribunal to decide the issue of role of the deceased as, in the other claim petition out of the same accident, the tribunal has held that at the time of accident Dilip Bhosle was driving the offending car, on that ground the matter was remanded for quantifying the compensation amount. Admittedly, the offending car was given to the deceased being Sabhapati of Zilla Parishad and he was travelling in the said car as occupant. Moreover, there is valid insurance policy for the occupants of the said car so there is no breach of conditions of insurance policy.

7. Considering these facts, I set aside the observations of the tribunal that deceased was travelling in the said car as

owner/borrower. The tribunal has already quantified the compensation amount, which is not challenged by the Respondent No.2/Insurance Company.

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

ORDER

- i. Appeal is allowed.
 - ii. The claimants are entitled for compensation of Rs.84,60,300/- @ 7.5% per annum from the date of filing claim petition till realisation of the amount.
 - iii. The Respondent No.2/Insurance Company shall deposit the compensation amount along with accrued interest thereon within eight weeks after receipt of the order.
 - iv. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
 - v. Compensation amount along with accrued interest be apportioned equally amongst all the Claimants.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)