IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 677 OF 2024

	New India Assurance Co. Ltd. Through its Divisional Manager, having their office at Guru Gobind Niwas, Murbad Road, Opp. Purnima Theatre, Kalyan & 41-B, Maker Tower-E, Near World Trade Centre, Mumbai-400005	))))))... Appellant
	Versus	
1	Usha Narayan Pawar Age 28 years Occupation : Housewife, (Widow of Deceased)	)))
2	Tejashree Narayan Pawar Age 11 years, Occ : Student (Daughter of the deceased)	)))
3	Lalita Narayan Pawar Age 9 years, Occ : Student (Daughter of the deceased)	)))
4	Bharati Narayan Pawar Age 7 years, Occ : Nil, (Daughter of the deceased)	)))
5	Aarti Narayan Pawar Age 57 years, Occ: Housewife (Mother of Deceased)	)))
6	Seetabai Anna Pawar Age 57 years, Occ : Housewife (Mother of Deceased) All Applicants are residing at Shirgaon, M.I.D.C. Pawar Chawl, House No. 40 39, Near Cycle Company Badlapur	))))))
7	Avinash Dnyandev Wake Adult, Occ : Business Residing at A/P Godavari House, Tal : Kopargaon, Dist : Ahmednagar (Owner of the Motor Tanker Bearing No. MH-17/C-6045)	))))))... Respondents

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Ms. Poonam Mital, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos. 1 to 6.

CORAM : SHIVKUMAR DIGE, J.
DATED : 19th NOVEMBER, 2024.

ORAL JUDGMENT :

1. This appeal is preferred by the appellant-Insurance Company against the Judgment and Order passed by Motor Accident Claims Tribunal, Kalyan (for short "the **Tribunal**").

2. It is claimants' case that on 28.07.2007 the deceased Narayan Pawar was proceeding towards Badlapur from Nashik by his Minidoor Pick up van. At about 8.50 pm he stopped his minidoor pick up van on the side of Mumbai Agra Highway in the vicinity of Kalambe Village near Hill Top Hotel within the jurisdiction of Shahapur police station. At that time offending vehicle i.e. tanker bearing No. MH-17/C-6045 came from opposite direction in high and excessive speed and in rash and negligent manner and while overtaking another vehicle negligently gave dash to the minidoor pick up van of Narayan Pawar. In that accident Mr. Pawar sustained multiple injuries and succumbed to the injuries. The offence was registered against the driver of tanker.

3. It is contention of learned counsel for the appellant Insurance Company that cheque which was issued by owner of the offending tanker as a premium of insurance policy. The said cheque was dishonored hence policy was canceled. At the time of accident, the offending vehicle was not insured with the appellant. The witness was examined to prove the said fact but the learned Tribunal has not considered evidence on record and has passed impugned order which is erroneous hence requested to allow the appeal.

4. It is contention of learned counsel for the respondents-claimants that the Insurance Company failed to produced received receipt of notice of cancellation of policy issued to owner of vehicle. The learned Tribunal has passed well reasoned order. No interference is required in it and requested to dismiss the appeal. She further submitted that at the time of accident deceased was 35 years old but the Tribunal has applied wrong multiplier 15 instead of 16. She further submitted that there are seven claimants. The Tribunal has deducted $1/4^{th}$ amount for personal expenses it should be $1/5^{th}$. She further submitted that the consortium amount has given to only one claimant it should be for all the claimants.

5. Though respondent No.8 is served none present for respondent No.8, hence this Court is deciding this appeal on merit.

6. I have heard both learned counsel. Perused the Judgment Order passed by the Tribunal.

7. It is contention of learned counsel for the appellant that the cheque which was issued as a premium of insurance policy was dishonored hence the Insurance policy was canceled. It was intimated to the owner of offending vehicle. To prove its defence the Insurance Company has examined DW-1 Anjali Karve at Exh.-61. She has stated that in this matter the insurer was issued the first policy (Exh.-F-61). The cheque issued by the insurer as a premium of insurance policy was dishonored hence policy was canceled, intimation was given to insurer. In cross examination she admitted that she has not produced acknowledgment of notice issued to owner and R.T.O. In my view, though DW-1 has stated that notice about the issuance and cancellation of policy to the owner of offending vehicle but acknowledgment of receipt of notices were not produced on record so it has not been proved that intimation was given to the owner of vehicle and R.T.O. about cancellation of insurance policy. The Tribunal has passed pay and recover order. It is not challenged by the owner of the offending vehicle. The Tribunal has passed well reasoned order. No interference is required in it.

8. It is contention of learned counsel for the respondents-claimants that at the time of accident deceased was 35 years old. The Tribunal should have applied multiplier of 16 instead of 15, which is erroneous. Hence I am considering multiplier of 16. Learned counsel further submitted that while deducting amount for personal expenses the Tribunal has deducted 1/4th amount for personal expenses. There are 7 claimants.

It should be 1/5th amount for personal expenses. The Tribunal has awarded consortium amount to only one claimant. As per the view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** 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.

9. Considering the above calculations, the respondents/claimants are entitled for following compensation.

Particulars	**Rs.**	**Entitlement**
Monthly Income of the deceased	Rs.	10,000/-
40% Future Prospects	Rs.	4,000/-
Total Income	Rs.	14,000/-
1/5th Personal expenses	Rs.	2,800/-
Remaining income for the finality 4/5th of Income	Rs.	11,200/-
Multiplier (Rs.11,200 X 12 X 16)	Rs.	21,50,400/-
Consortium (Rs.48,000 X 7)	Rs.	3,36,000/-
Loss of Estate	Rs.	18,000/-
Funeral Expenses	Rs.	18,000/-
Total	Rs.	25,22,400/-
Compensation awarded by Tribunal	Rs.	19,45,000/-
Total Enhanced amount	Rs.	5,77,400/-

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

ORDER

(I) The Appeal is dismissed.

(II) The respondents/claimants are entitled for enhanced amount of Rs. 5,77,400/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount Rs.3,72,000/- is consortium amount. The respondents/claimants are entitled for @7.5% interest on this amount from 1st November, 2017 till realisation of amount.

(III) The appellant/ Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

(IV) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(V) The appellant/Insurance Company can recover the enhanced amount along with interest from owner of offending vehicle/ respondent No.7 as directed by the Tribunal. The respondent Nos. 1 to 6 /claimants shall pay deficit Court fee, if any.

(VI) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(VII) R & P be sent back to the Tribunal.

(VIII) All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.12.10 11:06:15 +0700