

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

**INTERIM APPLICATION NO.6706 OF 2024
IN
FIRST APPEAL NO.504 OF 2024**

Smt.Suman Rajendra Gupta & Ors. Applicants
V/s.

Magma HDI General Insurance Co. Ltd. Respondent

**WITH
INTERIM APPLICATION NO.1017 OF 2024
WITH
INTERIM APPLICATION NO.1016 OF 2024
IN
FIRST APPEAL NO.504 OF 2024**

Magma HDI General Insurance Co. Ltd. Applicants
V/s.

Smt.Suman Rajendra Gupta & Ors. Respondent

Mr.Jitendra Gor a/w Ms.Yashika Jain, for the Applicant.
Mr.Pandit Kasar, for the Respondent.

CORAM : ARUN R. PEDNEKER, J.

DATE : 23rd JULY 2024

P.C:-

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. Heard learned counsel for the parties.

2. The Appeal is filed primarily on the ground of contributory negligence. The learned counsel for Appellant submits that at the relevant time the deceased was not wearing a helmet. The Tribunal has on account of the non-wearing helmet already reduce 30% towards compensation at Paragraph No.20 quoted below:-

“20. It is the defence that deceased had contributed to an accident. Evidence of PW1 or Inquest Panchnama do not reveal, nay, it is silent on the point of whether or not deceased had helmet. Had he wore helmet, gravity to head injury would have been minimized and he would have been survived. Thus, notwithstanding PW1 did not witness the accident atleast it was expected from her to disclose under which condition the deceased left the house. In absence of such evidence, it shall be presumed that the deceased had contributed to an accident by not wearing helmet. It is well settled that under these circumstances, the compensation has to be reduced to the extent of 30% as observed in The New India Ass. Co. Ltd Vs. Julius T.J. Freitas decided on 19th December 2019 by Bombay High Court.

3. In such a situation, I permit the major Claimants to withdraw 75% amount deposited before the Tribunal along with accrued interest thereon to the extent of their share. The amount of the minors be kept in Fixed Deposit in a Nationalized Bank so

also balance amount be kept in Fixed Deposit.

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4. For the reasons stated in the Application the delay is condoned.

5. The Appeal is admitted.

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6. The stay is confirmed.

7. Call Record and Proceedings.

(ARUN R. PEDNEKER, J.)