

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## FIRST APPEAL NO. 936 OF 2023

Chief Fire Officer Through ... Appellant  
Municipal Corporation of Greater Mumbai

Versus

Anju Shivkumar Vishwakarma and Ors. ... Respondent

## WITH

## INTERIM APPLICATION STAMP NO. 17664 OF 2024

Anju Shivkumar Vishwakarma and Ors. ... Applicants

In the matter of

Chief Fire Officer Through ... Appellant  
Municipal Corporation of Greater Mumbai

Versus

Anju Shivkumar Vishwakarma and Ors. ... Respondents

.....

Mr. Kishor Walanju a/w. Ms. Pallavi Khale, Advocate for the Appellant-MCGM

Smt. Varsha Chavan, Advocate for Respondent Nos. 1 to 5.

**CORAM : ARUN R. PEDNEKER, J.**

**DATED : 5<sup>th</sup> JULY, 2024.**

**P.C. :**

1. The appeal is filed on the ground of negligence and also on the ground of quantum.

2. As regards the issue of negligence is concerned, there is finding that motorcycle rider had not consumed alcohol so also, there is evidence on record to suggest that police papers are in favour of the claimant and case is registered against the driver of the offending vehicle. It is also

informed by the Counsel for the MCGM that the driver of the insured vehicle is acquitted in the crime. Nevertheless, prima facie the police papers indicate that after investigation chargesheet is filed against the driver of the insured vehicle. The proof of a criminal case stands on a different footings as compared to proof of negligence which is based on preponderance of probabilities before the Motor Accident Claims Tribunal. As regards the quantum of compensation, the passbooks were produced before the Tribunal. The passbook entries shows that the income was substantial and the Tribunal has taken the income of the deceased @Rs.10,000/- per month. At the relevant time, the deceased was running a motor mechanic garage in the name and style of Shiv Auto Parts at Mulund and Rs.10,000/-. Income prima-facia cannot be taken to be exorbitant.

3. This Court considering that the matter cannot be possibly be disposed at this stage, permit the claimants to withdraw 65% of the amount along with accrued interest.

4. In view of this, the appeal is admitted. Call R & P.

5. On admission, Advocate Ms. Chavan waives notice for respondent Nos. 1 to 5.

6. The claimants are permitted to withdraw 65% of the amount (including earlier 25% already withdrawn) of the compensation as directed

by the Tribunal along with accrued interest subject to filing of usual undertaking to the satisfaction of the Presiding Officer of the Tribunal.

7. Interim Application (St.) No. 17664 of 2024 disposed of.

( ARUN R. PEDNEKER, J.)

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