



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.995 OF 2022

APPELLANT

Ori. Resp. No.2 on R.A.

:

Divisional Manager,

New India Assurance Co. Ltd., Ganesh Chamber, Lakshmi Nagar Square, Nagpur, through the Regional Manager, Nagpur Regional Office at 1st Floor Riaan House, Opposite Kasturchand Park, Mohan Nagar, Nagpur.

..VERSUS..

RESPONDENTS

Original Claimants on R.A.

: 1

Tina Wd/o Nitin Hadke,

Aged about 33 years, Occupation Service

2

Arnav Nitin Hadke,

Aged 1 ½ years, being minor, represented by his mother, respondent No.1.

3

Vitthal Narayan Hadke (Deleted),

Aged 69 years, Occupation

4

Lalita Vithal Hadke,

Aged 65 years, Occupation Household.

All R/o Plot No.19, Umred Road, near Hanuman Mandir, Ramkrushna Nagar, Ayodhya Nagar, Dighori, Nagpur.

Original opponent No.1, on R.A.

5

Nilesh Subhash Sadavarte,

Aged about Major, Occu. Owner, R/o Plot No.13, Santaji Society, Balpande Layout, Nagpur.

Mr B. P. Bhat, Advocate for Appellant.

Mr V. B. Bhise, Adv. h/f Mr J. Y. Ghurde, Advocate for Respondent No.5.

CORAM : M. W. CHANDWANI, J.

DATED : 9th SEPTEMBER, 2024.

ORAL JUDGMENT

1. Heard.

2. **Admit.**

3. Correctness of the impugned award dated 05.07.2022 passed by the Motor Accident Claims Tribunal, Nagpur, has been challenged in the instant appeal, whereby the Tribunal has granted compensation to the original claimants on account of death of deceased Nitin Vitthal Hadke, who died in a vehicular accident on 16.06.2017.

4. The main ground raised in this appeal is that the original claimant No.3, father of deceased Nitin, claiming himself to be the dependent of the deceased died on 22.04.2022 during the pendency of his claim petition.

5. The contention is that the Tribunal, while deducting motor accident compensation towards personal expenses of deceased Nitin, did not consider the factum of death of one of the petitioners/dependants and while calculating the personal expenses, the Tribunal ought to have considered that there are three dependants of the deceased and accordingly should have deducted the personal expenses @ $1/3^{\text{rd}}$ of the assessed income instead of $1/4^{\text{th}}$.

6. It is to be noted that when the petition came to be filed, there were four dependants. The original claimant No.1 is a widow, whereas the original claimant No.2 is a minor son and original claimant Nos.3 and 4 are the parents of the deceased. The Tribunal considered the number of dependants as four and while considering the personal expenses of deceased Nitin, deducted $1/4^{\text{th}}$ of the assessed income towards personal expenses of the deceased. It is a matter of record that the father of the deceased namely Vitthal Narayan Hadke, petitioner No.3, died on 22.04.2022, during the pendency of the

petition, which is recorded by the Tribunal itself.

7. The claims and legal liabilities crystallize at the time of accident itself. Therefore, the entitlement of the claimants at the time of accident is to be considered. Changes post thereto, ordinarily do not affect pending proceedings. Therefore, the insurer cannot seek benefit of subsequent death of the deceased's dependant during pendency of the legal proceedings. Subsequent death of the deceased's dependant during pendency of the petition cannot be a reason for reduction of the motor accident compensation. Therefore, in my view, the Tribunal has rightly deducted 1/4th of the assessed income towards personal expenses.

8. A reference can be made to the decision of the Hon'ble Supreme Court in the case of *Kirti and another vs. Oriental Insurance Company Ltd., (2021) 2 SCC 166*, wherein para 9 of the decision, the Hon'ble Supreme Court has observed as under :

“9. We have thoughtfully considered the rival submissions. It cannot be disputed that at the time of death, there in fact were four dependents of the deceased and not three. The subsequent death of the deceased’s dependent mother ought not to be a reason for reduction of motor accident compensation. Claims and legal liabilities crystallise at the time of the accident itself, and changes post thereto ought not to ordinarily affect pending proceedings. Just like how appellant claimants cannot rely upon subsequent increases in minimum wages, the respondent insurer too cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Similarly, any concession in law made in this regard by either counsel would not bind the parties, as it is legally settled that advocates cannot throw away legal rights or enter into arrangements contrary to law.”

9. In view of the above, the appeal is devoid of merits.

Hence, it is **dismissed**.

(M. W. CHANDWANI, J.)