IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 971 OF 2003

	The New India Assurance Company Ltd. J. N. Heredia Marg, Ballard Estate, Mumbai – 400 038	… Appellant
	Versus	
1	Bhimrao Raghuvanshi Patil Age 41, Occupation : Service, R/o. Wakurde, (KH), Taluka Battis Shirala, District Sangli	
2	Sushila Bhimrao Patil Age 31, Occupation : Household, R/O. Wakurde, (KH), Taluka Battis Shirala, District Sangli	
3	Balkrishna Anand More Age : Adult, Occupation : Business R/o. J.N.2, Building No.30/B, B.L.5, Sector 10, First Floor, Jainagar, Vashi Navi Mumbai	... Respondents

…………

Ms. Karishma Jhaveri a/w. Mr. Hemal i/b. Navdeep Vora & Associates, Advocates for the Appellant.
Mr. Sharad Bhosale i/b. Mr. Dilip Bodake, Advocate for Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.
DATED : 17th JULY, 2025.

ORAL JUDGMENT :

1. This appeal is preferred by the appellant/ Insurance Company against the Judgment and Order passed by the Motor Accident Claims Tribunal, Satara (for short “the Tribunal”).

2. It is contention of learned counsel for the appellant /Insurance

Company that the deceased was 10 years old boy and he was travelling in the goods vehicle. There was breach of terms and conditions of insurance policy. Hence, Insurance company is not liable to pay the compensation but this fact is not considered by the Tribunal and has passed Judgment and Order which is erroneous, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos. 1 and 2/claimants that the deceased was travelling in the offending vehicle with the goods. Learned counsel further submitted that the Tribunal has not awarded future prospects, multiplier is not applied, consortium amount is not awarded and income of the deceased is not considered, hence requested to award proper compensation and dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal. It is claimant's case that on 18.06.1999 at about 6.30 a.m., Vinod Patil with brother Mukesh were travelling from Mumbai to village Wakurde in truck No. MH/04/h-6997. While truck was proceeding, the truck met with an accident at village Surur. The truck gave dash to the railing of the small bridge. Due to said accident, Vinod died on the spot. To prove the defence that, there was breach of terms and conditions of insurance policy, no evidence is produced on record by the insurance company. While deciding the claim petition, the Tribunal has observed that the deceased was travelling in the vehicle with some grosaries and utensiles, on that ground, the Tribunal has observed that there is no breach of terms and conditions of insurance policy. I do no find infirmity in it. It is settled principle of law that, if any defence is taken by any party, it has to be proved by the cogent evidence. The appellant/ Insurance company had not produced any evidence to show the breach of policy, hence I do not find merit in it.

5. It is contention of learned counsel for the respondent Nos. 1 and 2 that the Tribunal has not considered monthly income of the deceased, no multiplier is applied and no future prospects is awarded. In my view, no appeal is preferred by claimants against the Judgment and Order, hence I am not considering the submission of learned counsel for the claimants. The Tribunal has awarded consortium on lower side.

As per the view of the Hon'ble Apex Court in the case 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/- as funeral expenses and Rs.18,000/- for loss of estate. There are two claimants. Total comes to Rs.1,32,000/-.

It is contention of learned counsel for the appellant /Insurance Company that interest is awarded on higher side at 9% p.a. I find substance in it. I am considering interest @7.5% p.a.

6. In view of above, I pass following order:

ORDER

i. The appeal is partly allowed.

ii. The respondent Nos. 1 and 2/ claimants are entitled for @ 7.5% p.a. on compensation amount awarded by the Tribunal instead of @9% p.a.

iii. The respondent Nos.1 and 2/ claimants are entitled for enhanced amount of Rs.1,32,000/- interest @7.5% p.a. from 1st November, 2017 till realisation of the amount.

iv. The appellant/Insurance Company shall deposit the enhanced amount along with accrued interest within six weeks after receipt of the order.

v. The claimant is permitted to withdraw the deposited amount and enhanced amount deposited by the Insurance company.

vi. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

vii. The respondent Nos.1 and 2/ claimants shall pay deficit Court fees on enhanced amount as per rule.

viii. R & P be sent back to the Tribunal.

ix. Pending applications, if any, also disposed of.

7. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2025.07.28 15:24:52 +0700