

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 1267 OF 2001**

The Oriental Insurance Company
New India Insurance Building, Mahatma Gandhi
Road, Mumbai – 400 001

... Appellant

Versus

- 1 M/s. Fleet Ways Company
41, Warden Road, Bandra (W),
Mumbai – 400 050
- 2 Mehrunissa Abdul (Gani) Rehman Parkar
- 3 Daeem Abdul (Gani) Rehman Parkar

... Respondents

All Adults, Residing at and post Furus,
Taluka Khed, Dist. Ratnagiri

WITH**FIRST APPEAL NO. 1266 OF 2001**

The Oriental Insurance Company
New India Insurance Building, Mahatma Gandhi
Road, Mumbai – 400 001

... Appellant

Versus

- 1 M/s. Fleet Ways Company
41, Warden Road, Bandra (W),
Mumbai – 400 050

Dismissed as per RJ Courts order dtd. 20.10.15 in
CAF No. 5102/2001.

- 2 Mehrunissa Abdul (Gani) Rehman Parkar
- 3 Daeem Abdul (Gani) Rehman Parkar
- 4 Zakeer Abdul (Gani) Rehman Parkar
All Adults, Residing at and post Furus,
Taluka Khed, Dist. Ratnagiri

... Respondents

**WITH
FIRST APPEAL NO. 1205 OF 2001**

The Oriental Insurance Company
New India Insurance Building, Mahatma Gandhi
Road, Mumbai – 400 001

... Appellant

Versus

- 1 M/s. Fleet Ways Company
41, Warden Road, Bandra (W),
Mumbai – 400 050
(Dismissed as per RJ Courts order dtd. 20.10.15 in
CAF No. 5102/2001.)
- 2 Gaur Jahan Khalid Parkar
Adult
- 3 Bushra Khalid Parkar
- 4 Sarah Khalid Parkar
Both minors, through their mother and natural
guardian Gaur Jahan Khalid Parkar, Respondent
No.2 abovenamed.
- 5 Mehrunissa Abdul (Gani) Rehman Parkar
All Adults, Residing at and post Furus,
Taluka Khed, Dist. Ratnagiri

... Respondents

.....

Mr. Rajesh S. Datar, Advocate for the Appellants in all Appeals.

Mr. C. M. Lokesh a/w. Mr. Keval Bansagade, Advocates for Respondent Nos.
2 and 3.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th JULY, 2025.

ORAL JUDGMENT :

1. These appeals are preferred against the Judgment and Order passed by the Motor Accident Claims Tribunal, Raigad (for short “the Tribunal”). As the issue involved in all the appeals are same hence I am deciding all the appeals by this common Judgment.

2. It is contention of learned counsel for the appellant/Insurance Company that there was breach of terms and conditions of insurance policy as private vehicle was converted into the commercial vehicle. The deceased were travelling in the offending vehicle when it was converted into commercial vehicle, 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 respondent Nos. 2 and 3/ claimants that at the time of accident, the offending vehicle was insured with the appellant/ Insurance company. The policy was comprehensive insurance policy which covers the insurance of the occupants of the vehicle. Moreover, no evidence is produced on record by the Insurance company to prove that there was breach of terms and conditions of Insurance policy. The Tribunal has passed well reasoned order. Learned counsel further submitted that the Tribunal has applied wrong multiplier and consortium amount is awarded on lower side, it be awarded and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by the Tribunal. To prove the breach of terms and conditions of insurance policy, the appellant /Insurance Company has examined their Manager. While dealing with the issue of liability of paying compensation,

the Tribunal has observed that at the time of accident, the offending vehicle was having comprehensive coverage of the insurance and it is admitted by the appellant/Insurance Company. The Tribunal has further observed that, the Respondent No.1 had submitted the proposal to convert the said car from private use to tourist taxi. This fact itself is not sufficient to hold that on the date of accident, the said vehicle was used as a tourist taxi. On that ground, the Tribunal has fixed liability on the Insurance policy. I do not find infirmity in it. In my view, no evidence is produced on record to show that on the day of accident, the said car was converted as tourist taxi. Only application was submitted to convert it, it cannot be said that there was breach of terms and conditions of insurance policy, hence I do not find merit in the contention that there was breach of said terms and conditions of insurance policy.

In First Appeal No. 1205 of 2001, the Tribunal has awarded consortium amount on lower side. As per the view of 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/- for funeral expenses and Rs.18,000/- for loss of estate.

In F.A. No. 1267 of 2001, there are 2 claimants. It comes to Rs. 1,32,000/-. In F.A. No. 1205 of 2001, there are 4 claimants. It comes to

Rs. 2,28,000/-. In F.A. No. 1266 of 2001, there are 3 claimants. It comes to Rs. 1,80,000/-.

8. In view of above, I pass following Order.

ORDER

- i. All the appeals are dismissed.
- ii. The claimants in F.A. 1267 of 2001 are entitled for enhanced amount of Rs. 1,32,000/- @7.5% interest per annum on this amount from 1st November, 2017 till realisation of the amount.
- iii. The claimants in F.A. 1266 of 2001 are entitled for enhanced amount of Rs. 1,80,000/- @7.5% interest per annum on this amount from 1st November, 2017 till realisation of the amount.
- iv. The claimants in F.A. 1205 of 2001 are entitled for enhanced amount of Rs. 2,28,000/- @7.5% interest per annum on this amount from 1st November, 2017 till realisation of the amount.
- v. The Insurance Company shall deposit the enhanced amount along with accrued interest within eight weeks after receipt of the order. The claimants are permitted to withdraw the deposited amount.

- vi. The statutory amount along with interest in all appeals be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- vii. The claimants shall pay deficit court fees on the enhanced amount, if any.
- viii. R & P be sent back to the Tribunal.
- ix. All pending applications, if any also disposed of.

SONALI
SATISH
KILAJE

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by SONALI
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(SHIVKUMAR DIGE, J.)