

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

FIRST APPEAL NO.1914 OF 2010

NILAM
SANTOSH
KAMBLE

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1. Sudamrao Ramrao Dhumal	}	
Age-57 years, Occ: Agricultature	}	
	}	
2. Sau.Shakuntala Sudamrao Dhumal	}	
Age-52 years, Occ: Housewife	}	
Both are R/o. Jarandeshwar Naka, Sadar	}	
Bazar, Satara	}	
Permanant R/at Karanjkhoph, Taluka-	}	
Koregaon, District-Satara.	}	...Appellants

Versus

1. Mahesh Suresh Dhumal	}	
R/at R.No.202 B Wing, Saijote Building,	}	
Kundan Nagar No.2, Road No.16,		
W/E Thane.		
2. The Oriental Insurance Co. Ltd.,	}	
Branch No.12, Indian Mercantile Chamber,	}	
4 th Floor, Ballard Estate, Mumbai-400 001.	}	
	}	...Respondents

Mr.Shailesh Chavan i/b Mr.Milind Deshmukh, for the Appellants.

Mr.Devendranath S. Joshi, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 03rd JULY 2025

ORAL JUDGMENT :-

. This Appeal is preferred against dismissal of the Claim Petition.

2. It is contention of the learned counsel for the Appellant-Claimant that, the Appellant-Claimant had filed Claim Petition under Section 163-A of the Motor Vehicle Act, 1988 ('M.V. Act' for short). As per this provisions, negligence of the deceased should not have been considered by the Tribunal, but the Tribunal has dismissed the Claim Petition which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Insurance Company that, the deceased was riding motorcycle and he was knocked down by unknown vehicle. The offence was registered against unknown truck driver. The Claimants had remedy to approach to the Collector Office to get the compensation, as it was hit and run case. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment

and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

5. It is Claimant's case that, on 6th October 2008, deceased Sanjay Dhumal, a student of MBA was riding the motorcycle on Mumbai-Bangalore highway, at that time, his motorcycle was knocked down by unknown truck. Due to dash, the deceased had suffered grievous injuries and died in the hospital while taking treatment. Offence was registered against unknown truck.

6. While dismissing the Claim Petition, the Tribunal has observed that, deceased died in the vehicular accident due to hit and run by an unknown truck. As the owner and rider of the motorcycle in question was not covered by the Insurance Policy, hence, the Claimant's are not entitled for compensation and dismissed the Claim Petition as not maintainable under Section 163-A of M.V. Act.

7. The date of the accident is of the year 2008 and the Appellants-Claimant's are waiting for compensation for more than 16 years. Considering these facts, and in the interest of

justice and as an exception to this matter only.

8. I am considering that the Appellants-Claimant's are entitled for at least consortium amount, as at the time of the accident, the motorcycle was insured with the Respondent No.2- Insurance Company. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, 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. There are two Claimants, total comes to Rs.1,32,000/- The Appellants-Claimant's can file appropriate Application before the concerned authority under the provisions of hit and run case.

9. The delay for filing the said Application is condoned as the Appellants are illiterate persons and their Advocates have not advised them to file the Application before the concerned authority. The mistake of the Advocate cannot be a ground to deny the compensation to the Claimant if they are entitled as per law.

1 2018 ACJ 2782 (SC)

10. In view of above, I pass following order.

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Appellant's-Claimant's are entitled for Rs.1,32,000/- @ 7.5% interest per annum from 1st November 2017 till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks after receipt of this order.
- (iv) The Appellant's-Claimant's are permitted to withdraw deposited amount along with accrued interest.
- (v) The Appellant's-Claimant's are permitted to file proceedings under provisions of hit and run before the appropriate authority. The concerned authority shall decide the said Application without considering point of delay for filing the Application. The said proceedings shall be decided on its own merit.

(vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)