IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 249 OF 2023

1. Tanaji Dinkar Powar]
   Age- 50 years, Occu-Service.]
2. Shamali Tanaji Powar]
   Age-23 years Occu-Service]
   Through POA No.1 above]
   Both R/a. Indai Nagar, Morewadi]
   Tal. Karveer, Dist. Kolhapur]

.... **Appellants**

Versus

1. Madhavi Tanaji Powar]
   Age- 48 years, Occ- Household]
   R/a. Indai Nagar, Morewadi,]
   Tal. Karveer, Dist. Kolhapur.]
2. Divisional Manager,]
   Oriental Insurance Co. Ltd.]
   204, E Ward, Kanchan-Ganga,]
   Near Pearl Hotel, Station Road,]
   Kolhapur.]
   (Policy No.161600/31/2020/3544,]
   Policy from 16/11/2019 to 15/11/2020)]

.... **Respondents**

Mr. Sangramsinh Yadav, Advocate for the Appellants.
Mr. Rajesh Kanojia (Through V.C.) i/b Res Juris, Advocate for the Respondent No.2 – Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th SEPTEMBER, 2025.

JUDGMENT. :

1. The Appellants-Claimants have challenged the dismissal of claim petition passed by the Motor Accident Claims Tribunal, Kolhapur (for short, "the Tribunal").

2. It is Claimant's case that on 9th February, 2020, at about 1:00 p.m. the deceased Saroj Powar was proceeding towards Panhala from village Kerle by the motorcycle. He was riding motorcycle cautiously on correct side of the road. At relevant time, one Maruti van bearing registration No.MH-10/C/9412 came from the opposite direction in high speed and in rash and negligent manner it abruptly came to the side of the deceased and gave dash to his motorcycle. Due to dash, the deceased sustained fatal injuries and died on the spot. The offence was registered against the driver of Maruti van.

3. It is contention of learned counsel for the Appellants that the Appellants had filed claim petition under Section 163-A of the Motor Vehicle Act, 1988 (for short, "MV Act"). The Tribunal has dismissed the claim petition on the ground that the deceased was son of the Appellants. The Appellant No.1 is owner of the motorcycle. Hence, he is not entitled for compensation, as the deceased had stepped in to the shoes of the owner of the motorcycle. The findings

of the Tribunal are erroneous. Learned counsel further submitted that the insurance policy of the motorcycle was comprehensive. It includes the insurer or owner cum driver. Hence, insurance of the deceased was covered under the insurance policy, but this fact has not been considered by the learned Tribunal. Learned counsel further submitted that the entire premium of insurance policy was paid. There is a clause in the insurance policy about insurance of the personal accident at Rs.15,00,000/-. The Appellants are entitled for the said amount, and requested to allow the appeal.

4. It is contention of learned counsel for the Respondent – Insurance Company that the Tribunal has passed well reasoned order, no interference is required in it. The deceased is the son of the Appellant No.1, who is owner of the motorcycle. In the insurance policy it is specifically mentioned that insurance cover is provided to owner cum driver. The deceased is son of the owner of the motorcycle and not the owner. Therefore, he does not fall under ambit of the claim. Learned counsel further submitted that to claim the amount under personal accident claim, the Appellant should have approached the Civil Court or Consumer Forum. Under Section 163-A of the MV Act, the Appellants cannot claim the insurance amount under the

personal accident policy. Hence, requested to dismiss the appeal.

5. I have heard both learned counsel, perused impugned judgment and order passed by the Tribunal.

6. While dismissing the Claim petition, the Tribunal has observed that, claim under Section 163-A of the MV Act is not maintainable. Insofar as contract between the owner of the motorcycle and the insurance company is concerned, the owner of the motorcycle is not claiming any compensation. Had the owner claimed any such compensation based on Personal Accident policy cover, the question of liability of the insurance company would have arisen. This question does not fall under consideration in this claim petition, on that ground, the tribunal has dismissed the claim petition. I am unable to understand the observations of the Tribunal as admittedly, at the time of accident, the motorcycle on which the deceased was riding was insured with the Respondent – Insurance Company. The insurance policy is at Exhibit-20/C, it shows the comprehensive insurance policy. In the insurance policy, the clause is mentioned as personal accident cover for registered owner cum driver (CSI) of Rs.15,00,000/-.

7. It is contention of learned counsel for the Respondent –

Insurance Company that this personal accident cover applies to owner cum driver and not to the son of the owner. In my view, this clause specifically states about for registered owner cum driver. It denotes that the insurance cover is provided to the owner and the person who was riding the motorcycle. Had it been only for the owner, there would not have been a mention of the driver. Moreover, it was personal accident policy for owner cum driver, but the premium was paid of the rider of the motorcycle as it was comprehensive policy, but this fact is not considered by the Tribunal.

8. It is contention of learned counsel for Respondent – Insurance Company that for getting personal accident benefits the appellants should have approached the Consumer Forum or Civil Court. In my view, the insurance policy of the motorcycle was in existence at the time of the accident and the deceased died due to accident, it is liability of insurance company to reimburse the amount as mentioned in the insurance policy, so any Competent Court can grant the said amount, and it is not necessary to approach any specific Court.

9. It is Claimants' case that the deceased was pursuing Hotel Management course and B.A. externally and was in 3rd year.

Considering this fact, I am considering yearly income of the deceased at Rs.40,000/- as provided under Section 163A of the MV Act. As per the structural formula under Section 163A of the MV Act, the Claimants are entitled for compensation, but as per view of Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram 2018 ACJ2782 (SC)***, I am considering Rs.48,000/- as consortium amount for each claimant, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

10. Considering above calculations, the Claimants are entitled for following compensation.

Income yearly	Rs.40,000/- as per Section 163-A
Less 1/3rd deduction for personal expenses	Rs.13333.33/-
Total	Rs.26,667/-
Multiplier 16 (Rs.26,667/-)	Rs.4,26,672/-
Consortium Rs.48,000/- X 2 (Claimants)	Rs.96,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,500/-
Total enhanced amount	Rs.5,58,672/-

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

<u>ORDER</u>

i. The appeal is allowed.

ii. The Appellants – Claimants are entitled for

Rs.5,58,672/- @ 7.5% interest per annum from the date of filing claim petition, till realization of the amount.

iii. The Respondent – Insurance Company shall deposit the compensation amount along with accrued interest within eight weeks, after receipt of this order.

iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The Appellants-Claimants shall pay the deficit Court fees, if any, as per Rules.

vi. Record and Proceedings be sent back to the Tribunal

12. All pending applications, if any, also stand disposed off.

(SHIVKUMAR DIGE, J.)