

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 247 OF 2005**

Oriental Insurance Co. Ltd. ... Appellant
versus
Mangesh Manohar Vaidya and anr. Respondents

**With
FIRST APPEAL (St.) NO. 2427 OF 2005**

Oriental Insurance Co. Ltd. ... Appellant
versus
Mangesh Manohar Vaidya and ors. Respondents

Ms. Yashika Jain i/b. Ms. Kalpana Trivedi, Advocate for the Appellant.
Ms. S. V. Sonawane, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th APRIL, 2025.

P.C. :

1. By this praecipe, learned counsel for the appellant is seeking modification of judgment dated 2nd December 2024.
2. Learned counsel for the appellant submitted that this Court has awarded amount of Rs.84,000/- for loss of consortium and funeral expenses in injury claim case in First Appeal No.247 of 2025 , which is not proper as it was injury claim, hence the order is required to be modified to that effect.
3. Learned counsel for respondent No.2 has no objection for it.

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4. Considering these facts, the amount of Rs.84,000/- which has been granted by this Court is in fact not required to be granted at all. Thus, the claimant are entitled for enhanced compensation of Rs. 1,32,000/- @ 7.5% interest from 1st November 2017 till realisation of the amount in First Appeal (St.) No.2427 of 2005 as it is death claim.

5. The judgment dated 2nd December 2024 be modified accordingly:

“1. First Appeal (St.) No. 2427 not on board. Taken on board.

2. Both these appeals are out of the common Judgment and Order passed by Motor Accident Claims Tribunal, Palghar (for short “the Tribunal”) hence, I am deciding both these appeals by this common judgment.

3. It is contention of learned counsel for the appellant-Insurance company that the offending vehicle was turned turtle on road. It was carrying liquid gas substance in it. The deceased and his son had sustained injuries who were traveling on the same road and they were following vehicle ahead of them. The blast took place of the same liquid substance of offending vehicle and there was fire. Due to flames of those fire, deceased father got serious burn injuries and his son got injured in it but while taking treatment the father died in the hospital due to burn injuries. Learned counsel further submitted that appellant /Insurance Company is not liable to pay compensation as the said accident was not occurred due to accident but it is due to burn injuries but this fact is not considered by the Tribunal, hence requested to allow the appeal.

4. It is contention of learned counsel for the respondent No.1 that no written statement was filed by the appellant -Insurance company before the Tribunal. The Tribunal has passed well reasoned order, no interference is required in it. Learned counsel further submitted that the Tribunal has not awarded consortium amount, it be awarded.

5. *I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal. Though the appellant has taken defence that death of the deceased and injury to the claimant has not been caused due to accident between the two vehicles but they suffered burn injuries due to explode of the gases liquid but no written statement was filed before the Tribunal. If written statement was not filed before the Tribunal, the appellant cannot raise the said ground in appeal. Hence, I do not see merit in the appeal. No evidence was led before the Tribunal by appellant to prove their defence hence I do not see merit in it.*

*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 to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are two claimants in First Appeal (St.) No. 2427 of 2005, they are entitled for Rs.1,32,000/- for consortium amount. Since First Appeal No. 247 of 2005 is in respect of injury claim, question of granting consortium and funeral expenses does not arise.*

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

ORDER

- i. *Both the appeals are dismissed.*
- ii. *In First Appeal (St.) No. 2427 of 2005, the claimants are entitled for enhanced amount of Rs. 1,32,000/- @ 7.5% interest from 1st November, 2017 till realisation of the amount.*
- iii. *The Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 6 weeks from the receipt of this order.*
- iv. *The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.*
- v. *The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.*
- vi. *R & P be sent back to the Tribunal.*

7. *The appeals are disposed of. All pending applications, if any, are also disposed of.”*
6. The modified judgment be uploaded on the official website.

(SHIVKUMAR DIGE, J.)