

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

**FIRST APPEAL NO. 1867 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 4721 OF 2023**

Baby Gopalkrishnan And Anr. ...Appellants

Vs.

The Chief Works Manager, Western
Railway And Anr. ...Respondents

Adv. Archishmati Chandramore a/w M. D. Suryawanshi	Advocate for the Appellants
Ms. Smita Thakur	Advocate for the Respondent No. 1
Mrs. Karishma Jhaveri, i/by M/s. Navdeep Vora and Associates	Advocate for the Respondent No. 2

CORAM : S. M. MODAK, J.

DATE : 08th OCTOBER 2025

P. C. :-

1. Heard learned advocate for the Appellants-claimants, learned Advocate for Respondent No. 1/insured/owner of the vehicle and learned Advocate for Respondent No. 2-Insurer.

2. The claimants whose claim is accepted by the Tribunal as per award dated 4.10.2019, **by learned Member MACT, Mumbai** were required to suffer for all these years. **They were denied benefit of getting full amount of compensation.** Mr. S. Gopalrishnan died in the vehicular accident on 19.09.2003. In fact, he was survived by Appellant No. 1-wife and Appellant No. 2-daughter. He was also having one daughter by name **Meenakshi Pratik Patil**. She got married and **she has consented** for disbursing the amount to her mother and her sister. The affidavit dated 10.01.2025 is tendered. It is taken on record and marked as 'Annexure-X'.

3. In fact, even though deceased was not having any son, the Appellant No. 1-wife while answering to the cross-examination on behalf of the insurer, answered that she is having two sons and both are married. The answer was "*I have 2 sons. Both are married*". It is on page no. 29. This mistake continued till the time award is declared and learned Member while apportioning the compensation has made the following order:-

- (a) 25% each of the compensation amount awarded with accrued interest be paid to Applicant Nos. 1 and 2.

(b) 25% each of the compensation amount awarded with accrued interest be paid to absent two sons after producing the heir-ship certificate from competent court.

4. In fact, according to the Appellant No. 1, she has replied that deceased was having two married daughters, however it was typed as two married sons. She realized this mistake and **she made two applications before the tribunal. Both were rejected.** Those details are as follows:-

- (a) The application dated 9.12.2019, page no. 31.
- (b) Second application under Section 152 of the Civil Procedure Code, page no. 42.
- (c) There is one order dated 22.12.2022 rejecting the application and
- (d) There is another order dated 19.01.2023 having the same fate.

5. That is why the Appellants have preferred this appeal. The prayer is “*the direction for disbursing the amount to two sons be deleted*” and “*entire amount be released to the Appellants*”. Learned Advocates for both the Respondents have submitted to this Court to

pass an appropriate order.

6. I have perused both the orders passed by learned Member. After reading that, I am of the opinion that the **view taken by learned Member is too rigid**. In fact, the Appellants have also produced copy of the heir-ship certificate issued by the Court of Civil Judge Senior Division, Vasai on 19.07.2022, wherein these Appellants were certified “*as legal heirs of the deceased-Gopalkrishnan*”, on page number 51.

7. Learned Member rejected the prayer on technical grounds, one of the reason is variance in the prayers and contradictory prayers, (page no. 40). The learned Judge has observed this is not a clerical or arithmetical mistake (on page no. 39). Another reason was name of another daughter was not disclosed in the original proceeding and also in heir-ship proceeding (page no. 49). The learned Member refused to consider said heir-ship certificate for the reason her share is not determined. The learned Judge ought not to have passed both the orders by laying emphasis on technicalities rather than case put up by the Appellants. **Even in original claim petition, Appellants have not pleaded that deceased was survived by two sons.** This has come in the evidence wrongly and later on, they have not pleaded that deceased

was having two sons. Ultimately, the Tribunal is required to consider the claim put up on behalf of the person who claimed to be legal representatives. The Court is required to consider the claim on the basis of the available documents. The Court is not expected to have verification of the claimants by making an independent enquiry. Ultimately, the persons who claim to be legal representative are responsible if any false claim is made by them. The Court has to consider the claim of the legal representatives after going through the averments and the documents. **There is every reason to believe that the answer given during cross-examination was wrongly recorded.** So the appeal needs to be allowed and both orders needs to be set aside. Hence, the order :-

ORDER

- (i) The First appeal is allowed.
- (ii) The orders dated 22.12.2022 in Misc. Appl. No. 588 of 2019 in MACP No. 1282 of 2014 and 19.01.2023 passed by the Member, MACT, Mumbai in MACP No. 588 of 2019 are set aside.
- (iii) The direction “25 % each of the compensation amount

awarded with accrued interest to be paid to absent two sons after producing the heir-ship certificate from competent court” be deleted and instead of that “the said amount be returned to the Appellant Nos. 1 and 2 alongwith accrued interest, if any”.

- (v) If in the future, if anyone will come forward and make a claim that they are sons of deceased-Gopalkrishnan and if Court will accept that claim, then in that case the Appellants to furnish an undertaking that they will abide to order of that Court.

8. Accordingly, First Appeal is disposed of.
9. Pending Interim application, if any, also stands disposed of.

[S. M. MODAK, J.]