



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.831 OF 2024

- 1] Dhanraj s/o Natthuji Kalambe,
Aged about 63 years, Occ: Nil
[Original Claimant No.2].
- 2] Sau. Shantabai w/o Dhanraj Kalambe,
Aged about 57 years,
Occupation: Nil
[Original Claimant No.3].

Both Residents of House No.359,
Ward No.3, Metangale Mohalla, Narkhed,
Tahsil Narkhed, District Nagpur. **APPELLANTS**

...VERSUS...

- 1] Richard Jagmohandas Madhok,
Aged about 49 years, R/o B-5/4083,
Vasant Kung, New Delhi.

ANOTHER ADDRESS:

16A, Khan Market Delhi.
[Original Respondent No.1].

- 2] The Manager,
HDFC ERGO General Insurance Co. Ltd.,
Shriramshyam Tower, Sadar, NAGPUR.
[Original Respondent No.2].

- 3] Sau. Pallavi w/o Nitin Mankar,
aged about 33 years,
Occupation: Household,
R/o Narkesani Ward, Hedgewar Chowk,
Nar Kala Maroti Mandir, VTC,
Bhandara-441904.
[Original Claimant No.1]. **RESPONDENTS**

Mr. R. L. Kadu, Advocate for Appellants/Applicants.
Ms. A. P. Athalye, Advocate h/f Mr. H. N. Verma, Advocate
for Respondent No.2.
Mr. Asgar Hussain, Advocate for Respondent No.3.

CORAM: **ROHIT W. JOSHI, J.**

DATE: **7th FEBRUARY, 2025.**

ORAL JUDGMENT:

1. Heard the learned counsel for the parties.

2. One Shyamsunder Dhanraj Kalambe met with a road accident on 17.06.2017. He died as a consequence of injury suffered in the accident. After the sad demise his widow, parents and brother filed a claim petition under Section 166 of the Motor Vehicles Act bearing Claim Petition No.783/2017. The said claim petition was decided on 21.03.2023. The learned Tribunal was pleased to award compensation of Rs.42,66,184/- along with interest at the rate of 7.5% per annum from the date of filing of petition till realization of the amount. The amount was apportioned between the petitioner nos.1 to 3 i.e. the appellant nos.1 and 2 and respondent no.3 herein. The respondent no.3 widow was awarded a sum of Rs.34,66,184/- along with interest whereas the present appellants who are the parents of the deceased were awarded Rs.4,00,000/- each along with accrued

interest. The petitioner no.4 the brother was not awarded any compensation holding that he is not a dependent of the deceased. Subsequently the respondent no.3 married with one Nitin Mankar on 04.06.2021.

3. This apportionment was after the second marriage of the respondent no.3. Thereafter the present appellants filed M.C.A. No.1143/2023 seeking equal distribution of compensation awarded. The learned Tribunal has passed order dated 16.10.2023 on the said application increasing the amount of compensation awarded to the parents, appellants herein from Rs.4,00,000/- each to Rs.7,50,000/- each. This enhancement is granted on the basis of a pursis filed by the respondent no.3 stating that she was ready to part with additional amount of Rs.1,50,000/- + interest with which this figure was rounded upto Rs.7,50,000/-. Accordingly, the learned Tribunal has awarded Rs.7,50,000/- to each of the appellant nos.1 and 2 and Rs.45,96,927/- to the respondent no.3. This figure includes the amount of interest as well.

4. The present appeal is preferred challenging the order dated 21.03.2023. The parents of the deceased who are appellants claim that the amount of compensation ought to have been distributed in three equal shares.

5. I have heard the learned counsel Mr. R. L. Kadu for the appellants and Mr. Asgar Hussain, the learned counsel for respondent no.3 and the respondent no.1 and 2 are the contesting parties. Quantum of compensation awarded is not disputed. After hearing the rival submissions, following point arises for my consideration.

What should be the manner in which the amount of compensation should be apportioned between the appellants and the respondent no.3?

6. In a claim petition under the Motor Vehicles Act the apportionment of compensation depends upon extent of dependency of the dependents on the income of the deceased. Therefore, normally having regard to the age, the parents are awarded lesser compensation as compared to the children and the widow. A relevant factor for deciding apportionment is also the source of income of the respective claimant.

7. Having regard to the fact that the wife now is not dependent solely upon the compensation awarded by the learned Tribunal on account of sad demise of her first husband, the distribution of amount needs to be re-visited.

8. Mr. Hussain the learned counsel for the respondent no.3 fairly makes a statement that the respondent no.3 is happily married with her husband and is also blessed with a son from the second marriage. The learned Tribunal ought to have taken note of this development, pertinently because the second marriage was solemnized while the claim petition was pending. The appellant no.1 is now aged about 53 years and the appellant no.2 is aged about 57 years. The appellants do not have any independent source of income is an admitted fact. However, it is also undisputed that apart from the deceased the appellants have two other sons who are looking after them. Taking a holistic approach in the matter having regard to subsequent development i.e. second marriage of respondent no.3 by virtue of which even she is not completely dependent on amount of compensation for her survival. The Tribunal has erred in making apportionment of amount without adverting to all relevant facts. I am of the considered opinion that ends of justice will be sub-served if the widow is granted half of the amount of compensation and the parents are granted 25% each of the total compensation. The parties will also be entitled to withdraw accrued interest with respect to the their respective shares. In the result, the appeal is disposed of as under:

The order dated 16.10.2023 passed by the learned Member, Motor Accident Claims Tribunal No.4, Nagpur in M.C.A. No.1143/2023 is modified as under:

The total compensation of Rs.42,56,184/- as awarded by the learned Tribunal in Claim Petition No.783/2017 will be apportioned between the appellant nos.1 and 2 and respondent no.3 as under.

- [i] Appellant no.1 10,64,046/- (Rs.42,56,184 ÷ 4)
along with accrued interest.
- [ii] Appellant no.2 10,64,046/- (Rs.42,56,184 ÷ 4)
along with accrued interest.
- [iii] Respondent no.3 21,28,092/- (Rs.42,56,184 ÷ 2)
along with accrued interest.
- [iv] Parties to bear their own costs.

(ROHIT W. JOSHI, J.)