IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.507/2021

I.C.I.C.I. Lombard General
Insurance Company Limited,
Zenith House, Keshavrao Khade
Marg, Opp. Race Corse,
Mahalaxmi Mumbai through its
Legal Manager, Shri Dadasaheb
Dattu Tarate, 5th Floor, Land
Mark Building, Plot No.56,
Wardha Road, Ramdaspeth,
Nagpur.

... **APPELLANT**

...VERSUS...

1. Smt. Meera Shivaji Mane,
Age 31 years, Occ: Household,

2. Ku. Shweta Shivaji Mane,
Age 13 years, Occ: Education.

3. Om Shivaji Mane,
Age 9 years Occ: Education

4. Smt. Shevantabai Sitaram Mane,
Age 55 years, occ: Household
Respondent no.2 and 3 are minor
through their natural guardian
Mother i.e. respondent no.1,
R/o Saokhed Bhoi, Tq. Chikhli,
District : Buldana.

5. Nisar Khan Shahbaz Khan,
Age- Major, Occ: Business,
R/o H.O. No.40/650 Tikra Para,

Raipur (Chhatisgadh),
Now residing at Pathan Pura,
Ward No.6, Murtizapur,
Tq. Murtizapur, District: Akola.

...**RESPONDENTS**

Shri R.D. Bhuibhar, Advocate for the appellant
Shri S.A. Thakkar, Advocate for the respondents

CORAM : SMT. M.S. JAWALKAR, J.
DATED : 03/08/2022

JUDGMENT

Heard. Heard finally at the admission stage by consent of the learned Counsel for both the parties.

2. The appellant Insurance Company filed present appeal challenging the order passed in M.A.C.T. No.28/2011 dated 27/06/2017 only on the ground that the policy in question was never issued by the appellant company and that the copy of insurance policy placed on record of the learned Claims Tribunal was a fake policy. He has also raised other grounds that there is no evidence in respect of income of the claimant or expenses incurred towards medical expenditure.

3. The learned Counsel for respondents submitted that the order passed by learned M.A.C.T. is perfectly legal and justified and supported by sound reasoning and needs no interference.

4. I have considered the rival contentions of the parties and perused judgment passed by the learned Claims Tribunal. The learned Tribunal rightly appreciated this issue in paragraph Nos.17 and 18, that the copy of policy was received by the claimants from the police custody. Reliance is placed on the judgment of ***New India Assurance Company Limited, Varanasi and another Vs. Md. Khalil Nai and others,*** reported in, ***2012(3) T.A.C. 36(Pat.)***. In this case, it is held by Hon'ble Patna High Court that, "the Tribunal in a summary proceeding could not have decided the plea raised by the Insurance Company to hold the Insurance Cover Note as is forged, fabricated and fake and has rightly observed that the Insurance Company may take legal action, if any, against the owner and driver of the vehicle."

5. There is nothing on record to show that any investigation is carried out by the Company and it was discovered

that policy is fake. Even if case of the Insurance Company is presumed to be correct, the Insurance Company in spite of knowledge has not taken any criminal or civil proceeding against the owner of the offending vehicle. The amount towards N.F.L. was deposited in the year 2011 itself and said order was not challenged by the Company. Even from that day, no action was taken by the Company. No notice to the owner or information to the R.T.O. was sent. In view thereof, the learned Tribunal has rightly come to the conclusion that in view of inaction on the part of the Insurance Company it cannot be exonerated. The Insurance Company may take any action available in law against the owner and driver of the vehicle if the said policy is fake. The petitioners/claimants are the third parties and the copy of policy was given to them by the police. As such, it is rightly held that owner as well as the Insurance Company are jointly and severally liable to pay the compensation.

6. The learned Tribunal held notional income of claimant as Rs.4000/- per month. His age as per post mortem report held as 28 years. Applying the theory of test of reasonableness, the learned Tribunal rightly arrived at the conclusion in paragraph Nos.24 and

25 that claimants are entitled for Rs.13,93,000/-. The compensation awarded is neither unjust nor exorbitant. I do not see any reason to interfere with any of the findings with regard to the compensation or about liability of payment in the judgment of the learned Claims Tribunal. Accordingly the appeal stands dismissed.

(Smt. M.S. Jawalkar, J.)

R.S. Sahare