IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL 383 of 2022

Reliance General Insurance Co. Ltd., R/o. Reliance Center, 19, Walchand Hirachand Marg, Balard District, Mumbai -400001.	)	….Appellant
versus		
1 Anita Samadhan Dupargude, Age : 22 years. 2 Shrushti Samadhan Dupargude, Age : 6 years. 3 Suraj Samdhan Dupargude, Age : 4 years. 4 Samarth Samadhan Dupargude, Age : 3 years. 5 Shankar Amruta Dupargude, Age : 55 years. 6 Laxmi Shankar Dupargude Age : 42 years Respondents 1, 5 and 6 are guardian of Respondent Nos. 2 to 4. Occupation of Respondents 1 and 5 is labour. Occupation of Respondents 2 to 4 is Education. All above R/o. Malewadi (A), Tal. Malshiras, District : Solapur.	)	….Original Applicants

SHUBHADA SHANKAR KADAM
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7	Laxman Ramchandra Chavan, Age 45 years, Occu-Business, R/o. Amrutdip Cooperative Housing Society, Plot No.32, Room No.A/301, Sector 09. Khanda Colony, Panvel West, District Raigad.	))))))))	….Respondents. (Respondent Nos. 1 to 6 are Org. Applicants and
8	Samadhan Bhausaheb Yadav, Age : 43 years, R/o. Sonad, Tal. Sangola, District Solapur.	))))	Respondent Nos. 7 and 8 are Orig.Opp.Party

Ms. Shalini Shankar, Advocate for the Appellant.
Mr. Shankar Katkar i/b. Ms. Manisha Devkar, Advocate for Respondent Nos.1 to 6/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5TH APRIL, 2023.

Oral Judgment :

1. The issue involved in this appeal is breach of terms and conditions of insurance policy.

2. It is contention of learned counsel for the appellant that at the time of the accident, the driver of the offending vehicle was not holding valid and effective driving license but this fact is not considered by the Tribunal and has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent Nos. 1 to 6/claimants that to prove its defense, the appellant has not examined any witness before the Tribunal. The Tribunal has considered all the aspects, while passing the judgment and order. Hence, no interference is required in it. Learned counsel further submits that consortium is not awarded, it be awarded.

4. I have heard both learned counsel. Perused the judgment and order passed by Motor Accident Claim Tribunal , Malshiras (for short “the Tribunal”).

5. It is the contention of learned counsel for the appellant that at the time of the accident, the driver of the offending vehicle was not having valid and effective driving license. While dealing with this issue, the Tribunal has observed that the respondent No.3 has examined DW1 - Vaibhav Baburao Adake, Clerk in RTO Office. This witness has stated that respondent No.2 was having a valid license to drive heavy vehicles and it was valid between the period 24th December 2012 to 23rd December 2015. This witness was cross-examined but nothing elicited in the cross-examination of this witness. The Tribunal has held that it

cannot be said that respondent Nos. 1 and 2 have breached the terms of insurance policy. I do not find any infirmity in it.

6. The Tribunal has awarded Rs.70,000/- for loss of estate, loss of consortium and funeral expenses. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*** , each claimant is entitled for Rs.40,000/- as consortium, Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses. There are six claimants, so the consortium amount comes to Rs.2,40,000/- and Rs.30,000/- for funeral expenses and loss of estate. Total comes to Rs.2,70,000/-, out of this amount, if Rs.70,000/- awarded by the Tribunal is deducted, it comes to Rs.2,00,000/-. The claimants are entitled for this amount.

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

1. The appeal is dismissed. No order as to cost.

2. The claimants are entitled for additional amount of Rs.2,00,000/- @ 7.5% interest per annum from 1st October 2017 till realisation of the amount.

3. The appellant-Insurance Company is directed to deposit the additional amount along with accrued interest thereon within six weeks from receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount along with interest accrued thereon be transmitted to the Tribunal. Parties are at liberty to withdraw it.

8. Pending applications, if any, stand dispose of.

(SHIVKUMAR DIGE, J.)