

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 168 OF 2001**

The Manager, The Oriental Insurance Co. Ltd.
Pune Regional Office, Progress House, 54,
Pune Mumbai Road, Pune – 411 005.

.... Appellant

Versus

Yashoda Shamrao Patil
Age 50 years, Occ. Household work (since deceased
hence deleted) through legal heirs -

1. Jagannath Shamrao Patil

Age 27 years.

2. Chandrakant Shamrao Patil

Age 24 years, (Respondent Nos. 1 and 2 r/o.

Kuchi, Taluka Kavathe Mahankar, District Sangli

3. Vishnu Bhiku Tapkir

Truck-owner of Truck No. MTQ.2821

R/o. at & Post, Charoli Taluka Haveli,

District – Pune

.... Respondents

.....

Mr. Bhavesh Sawant i/b. Minal Chandnani, Advocate for the Appellant.

Mr. T.S.Ingale, Advocate for Respondent Nos. 1 to 3.

Ms. Mrunmayi Khambete i/b. V. B. Tapkir, Advocate for Respondent No.4

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. The issue involved in this appeal is at the time of accident the driver of insured vehicle was not holding effective and valid driving licence.

2. It is the contention of learned counsel for the appellant-Insurance Company that at the time of accident the driver of insured vehicle was not holding effective and valid licence but this fact is not considered by the Tribunal and has wrongly fixed the liability on the appellant-Insurance Company. Leaned counsel further submitted that to prove the said fact the appellant has examined witness Sampat Ingale, Inspector in RTO, who has stated that licence of Dastagir N. Shaikh, driver of offending vehicle was not found in the office record. It proves the contention of appellant, hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent – claimants that driver was having effective and valid driving licence at the time of accident as driver has examined himself as witness as DW-1 and he has stated that at the time of accident he was holding valid driving licence. He cross-examined by learned counsel for appellant- Insurance Company. No suggestion was given to this witness to produce the driving licence nor suggestion was given to him that he was not holding effective and valid driving licence. It shows that appellant- Insurance Company had admitted that he was having valid driving licence. Learned counsel further submitted that the Tribunal has not awarded consortium amount. As per the view of the Hon’ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***¹, it should be awarded.

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4. Learned counsel for Respondent No.4 submitted that appropriate order be passed.

5. I have heard both learned counsel. Perused the Judgment and Order passed by Motor Accident Claims Tribunal, Sangli (for short “**the Tribunal**”). In respect of the issue of driving licence, the respondents have examined the driver of offending Truck–Dastagir Shaikh as defence witness. He has stated that at the time of accident he was possessing valid and effective driving licence, no suggestion was put to him at that time he was not holding effective and valid driving licence nor he was asked to produce the said driving licence. The appellant-Insurance Company has examined Sampat Ingale, Motor Vehicle Inspector in RTO office, Solapur in support of their contention. He has stated that he has verified his office record from 01.01.1970 to 13.12.1993 to ascertain the driving licence of Dastagir Shaikh, if any. It was not found. In my view, the driver Dastagir Shaikh, opponent No.3 in his evidence has categorically stated that he was holding driving licence and no suggestion in cross examination was given to him that he was not holding driving licence nor he was asked to produce driving licence. It was burden on the appellant-Insurance Company to prove the said fact. Hence, I do not see merit in the contention of learned counsel for the appellant that driver was not holding effective and valid driving licence. The Tribunal has awarded Rs.5,000/-

towards consortium amount and Rs.5,000/- as loss of love and affection. As per the view of Hon'ble Apex Court in the case of *Magma* (supra) each claimant is entitled for Rs.44,000/- as consortium amount and Rs.16,500/- for funeral expenses, Rs.16,500/- for loss of estate.

There are three claimants. Total comes to Rs.1,32,000/- and Rs.33,000/-. It comes to Rs.1,65,000/-. If amount Rs.10,000/- awarded by the Tribunal deducted from it, it comes to Rs.1,55,000/-. The claimants are entitled for this amount.

6. It is the contention for learned counsel for the appellant that rate of interest awarded by the Tribunal is 12% it is on higher side it should be reduced. In my view, it should be 9%.

7. Considering the above reasons, I pass following order:

- (i) The appeal is partly allowed. No order as to costs.
- (ii) Interest rate on the compensation amount shall be 9% instead of 12%. The claimants -respondent Nos.1, 2 are entitled for enhanced amount of Rs.1,55,000/- @7.5% interest per annum on this amount from 1st November, 2017 till realisation of the amount.
- (iii) The Appellant- Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after the receipt of this order.

- (iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) Statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per rule.

8. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)