

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

FIRST APPEAL (ST) NO. 4173 OF 2020

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The Oriental Insurance Co. Ltd,
Divisional office No.6, Magnet House,
Narottam Moraraji Marg,
Ballard Estate, Mumbai – 01,
Through its Legal Hub Tp-Hub,
State Bank Building, 3rd floor, Fort,
Mumbai : 400 023.

....Appellant
(Orig. Opp. No.2)

Versus

1. Smt. Nasreen Sajid Khan,
Age about – 35 years, (wife of deceased),
2. Namish Fatima Sajid Khan,
Aged 8 years, (Daughter of deceased),
3. Marah Fatima Sajid Shaikh @ Khan,
Aged 7 years, (Daughter of deceased),
(Applicant No.2 & 3 being Minor,

Through next friend & Mother
Smt. Nasreen Sajid Khan,
All R/at – C/o. Shri. Jainul abeddin,
Panchasaheb Pirjade, Room No. 18,
G. D. Ambekar Marg, Naigaon, Mumbai-12

... Resp. Nos. 1 to 3
(Orig. Applicant)

4. Treshkumar Madanlal Sahegal,
Chawl No. 10, Room No. 108,
G. T. B. Nagar, Punjabi Camp,
Sion-koli wada, Mumbai – 37.

(Owner and Driver of Taxi bearing,
No. MH-01-JA-283).

....Respondent No.4
(Orig. Opp. No.1)

Ms. Poonam Mittal for the Appellant.
Mr. T. J. Mendon i/b Mr. S. G. Thorat for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellant/Insurance Company that at the time of accident driver of the offending vehicle was not holding effective and valid driving licence. After the accident, he renewed his licence but this fact is not considered by the tribunal and has fixed the liability on Insurance Company, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that driver could not renewed his licence before the accident, it does not mean that he was not skilled driver. The order passed by the tribunal is legal and valid and no interference is required in it. He relied on *IFFCO TOKIO General Insurance Company Limited vs. Geeta Devei & Ors. {SLP (C) NO. 19992 OF 2023}*.

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

5. The issue raised by the Appellant/Insurance Company that the driver was not holding effective and valid driving licence at the time of accident. In support of their defense, they have examined two witnesses. It has come on record that the driver of offending vehicle has renewed driving licence after the accident and at the time of accident the licence was not renewed.

6. In my view, though, at the time of accident the driver had

not renewed the licence, he was skilled driver. As per the view of Hon'ble Apex Court in the case of *IFFCO TOKIO (supra)* not renewal licence cannot be said that he was not knowing the driving skills. Hence, I do not see merits in the contention of Appellant that driver was not holding effective and valid driving licence.

7. The learned counsel for the Respondents/Claimants submit that consortium amount was given only to widow and not to other Claimants. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are two claimant's are remaining to get the amount of consortium = $48000 \times 2 = 96,000/-$. The claimant's are entitled for this amount.

8. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The Claimants are entitled for enhanced

compensation of Rs. 96,000 at the rate of 7.5% interest from 1st November, 2017 till realization of the amount.

- iii. The Appellant/Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
 - iv. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - v. Learned counsel for the Appellant undertakes to remove the office objections.
 - vi. The delay for filing Appeal is condoned, The Appeal be registered for statistical purpose.
9. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)