IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 46 OF 2003

1. Smt. Sucheta Vinaykumar Oak,)
Age: 48 years, Occu: Household,)
Residing at 6, 'Sumedha',)
Ghantali Co-operative Housing Society,)
Near Ghantali Temple, Naupada,)
Thane – 400 602.)

2. Saurabh Vinakumar Oak)
Age: 25 years, Occu: Service,)
Residing at C/o. Shri. S. M. Sohoni,)
Rohini Apartments, Behind Nashik people's)
Co-operative Bank Limited,)
Canada Corner, Nashik.)

3. Miss. Swaroopa Vinaykumar Oak)
Age: 20 years, Occu: Student,)
Residing at 6, 'Sumedha',)
Ghantali Co-operative Housing Society,)
Near Ghantali Temple, Naupada,)
Thane – 400 602)

….**Appellants**

Versus

1. M/s. Kripalsingh and Sons)
Having office at 147, Tagore Park,)
Delhi Owners of Truck Bearing)
No. DL-IG-1307.)

2. Shri. Mohammed Jafar Zahir Ahmed)
Adult, Occu: Driver,)
Residing at Kaziwada, Securnderabad,)
District – Bulandshahar, Uttar Pradesh.)

3. The Oriental Insurance Company Limited)
Having its Registered office at Oriental House,)
J. Tata Road, Bombay-20.)

4. Shri. Pushpan S/o Raghavan)
(Owner of Car No. GJN 5351),)
Adult, Residing at 13, Sharad Nagar,)
Tarsali, Vadodara, State of Gujarat.)

5. The United India Insurance Co. Ltd.)
Having its Registered Office at)
United India House, 24, Whites Road)
Madras 600 014.)

6. Rajauddin Gazi s/o Ismail Khan)
Residing at Chasiyawaso, Sikandarabad,)
District Bullandhshahar,)
State of Uttar Pradesh)

....Respondents

FIRST APPEAL NO. 47 OF 2003

1. Aditi Pravin Sathe,)
Age: 24 years, Occu: Household)

2. Savli Pravin Sathe, a minor by her)
next friend and natural guardian)
Aditi Pravin Sathe;)

3. Prabhakar A. Sathe,)
Age: 58 years, Occu: service)

4. Shakuntala Prabhakar Sathe,)
age about 49 years Occu: household.)

All residing at B-6 IInd Floor, Jeevan-Jyoti,)
Shivaji Nagar, Naupada, Thane-400 602)

....Appellants

Versus

1. M/s. Kripalsingh and Sons)
having Office at 147, Tagore Park, Delhi,)
Owner of Truck No. DL-IG-1307;)

2. Mohammed Jafar Zahir Ahmed,)
Age: adult, Occu: Driver,)
residing at Kaziwada, Sikanderabad,)
Bulandshahar, Uttar Pradesh.)

3. The Oriental Insurance Co. Ltd.)
having its registered office at Oriental House,)
J. Tata Road, Bombay – 20.)

4. Pushpan S/o. Raghavan Owner of)
Car No. GJN-5351, Age: Adult,)
residing at 13, Sharad Nagar Tarsali, Vadodara,)
State of Gujarat.)

5. The United India Insurance Co. Ltd.)
having its registered office at)
United India House, 24, Whites Road,)
Madras-600014.)

6. Rajauddin Gazi s/o. Ismail Khan)
residing at Chasiyawaso, Sikandrabad,)
district Bulandshhar, State of U.P.)

….**Respondents**

Ms. Druti Datar i/b Adv. R. S. Datar for the Appellant in both matters.
Mr. Bhavesh Sawant i/b Ms. Minal Chandani for the Respondent No.3 in both matters.
Mr. Chandrakant N. Chavan for the Respondent No.5 in both matters.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

1. Both these appeal are preferred by the original claimants against the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal"). As both these appeals are against the same judgment and order hence, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Appellants that in these appeals the tribunal has awarded future prospects and consortium amount on lower side. Learned counsel further submitted that in both appeals Respondent No.3/Oriental Insurance Company is ready to pay 80% compensation, out of total compensation, as per the chart prepared by the Claimants in both appeals, which includes future prospects and consortium amount. In First Appeal No. 46 of 2003, the total amount mentioned in the chart is of Rs.10,98,000/-. In First Appeal No. 47 of 2003 amount is Rs.15,64,000/-. The learned counsel further submitted that Respondent No.3 is ready to pay @ 7.5% interest on these amounts from the date of filing present appeal,

till realization of the amount. The Respondent No.3/Oriental Insurance Company have sent the email to the Claimants in that regard and Appellants/Claimants are agreed for it. Learned counsel further submitted that for remaining 20% amount, pay and recover order should be passed as Claimants had hired the car from their company and it was insured with Respondent No.5/United India Insurance Company but, tribunal has not considered this fact and has exonerated the Respondent No.5 which is improper. Hence, requested to allow the Appeals.

3. It is contention of learned counsel for the Respondent No.3/Oriental Insurance Company that they are ready to pay 80% amount along with 7.5% interest on it out of total compensation amount and as per the chart prepared by learned counsel for the Appellants. The compensation amount in First Appeal No. 46 of 2023 is Rs.10,98,000/- out of which Rs.8,78,400/- is 80%. In First Appeal No. 47 of 2003 the total amount is Rs.15,64,000/- out of which Rs.12,51,200 is 80%. Learned counsel further submitted that, the Respondent No.3 is ready to pay interest @ of 7.5% on this amount from the date of filing present appeal till realisation of amount. Hence, requested to pass appropriate order .

4. The learned counsel for the Respondent No.5/United India Insurance Company submits that there was breach of terms and conditions of Insurance Policy, as the owner of car had given the car on hire and reward basis to the deceased. The tribunal has held that Respondent No.5 is not entitled to pay the compensation, the order passed by the tribunal is legal and valid and no interference is required in it.

5. I have heard all learned counsels. Perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal").

6. The Respondent No.3/Oriental Insurance Company is agreed to pay the 80% amount out of the total compensation amount hence, it is not necessary to discuss about it. In respect of the remaining 20% amount admittedly the offending car, in which deceased were travelling, was insured with Respondent No.5. While dealing with this issue, the tribunal has observed that the deceased were travelling on hire and reward basis in the said car. There was breach of terms and conditions of Insurance Policy on that ground tribunal has exonerated the Insurance Company.

7. I am unable to understand the observations of the tribunal. As the offending car was taken on hire basis by the company of deceased, in which they were proceeding for work of the company. Admittedly, the premium of Insurance was paid by the owner of said car to the Respondent No.5 / United India Insurance Company. It is settled principle of law that, if there is breach of terms and conditions of Insurance Policy, the Insurance Company has to pay the compensation amount and recover it from the owner of car.

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

ORDER

i. Both appeals are allowed.

ii. In First Appeal No. 46 OF 2003 the Respondent No.3/Oriental Insurance Company shall pay Rs.8,78,400/- @ 7.5.% interest per annum, from date of filing appeal till realisation of amount to the claimants.

iii. In First Appeal No. 47 of 2003 the Respondent No.3/Oriental Insurance Company shall pay amount of Rs.12,21,200/- @ 7.5% interest per annum from the date of filing appeal till realisation of amount to the claimants.

iv. In First Appeal No. 46 of 2003 the Respondent No.5 shall pay the amount of Rs.2,19,600/- @ 7.5% per annum from the date of filing claim petition till realisation of amount to the claimants and in First Appeal No. 47 of 2003 the Respondent No.5 shall pay amount of Rs.3,12,800/- @ 7.5% per annum from the date of filing claim petition till realisation of amount to the claimants. The Respondent No.5 is permitted to recover the said amounts from owner of the vehicle.

v. The Respondent No.5 shall deposit the amounts along with accrued interest within six weeks after receipt of the order.

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

vii. The statutory amount be transmitted to the

Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

10. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)