IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 135 OF 2023

Tata AIG General Insurance Company	)	
Limited, Having their office at:Tower “A”	)	
Trade World, 6th Floor, Kamla City	)	
Kamla Mill Compound, S.B. Marg	)	…...Appellant/
Lower Parel, Mumbai – 400 014.	)	Orig. Insurer

Versus

1. Krishnawati Rajendra @	)	
Rajendrapratap Singh,	)	
Aged : 40 years,	)	
Widow of the deceased	)	...Original Applicant No.1
2. Avanish Rajendra @	)	
Rajendrapratap Singh	)	
Aged : 22 years, Son of the	)	
deceased	)	..Original Respondent No.2
Both the Applicant having their	)	
address at Shivnath Yadav Chawl	)	
Hanuman Nagar, Akurli Road	)	
Kandivali – East, Mumbai – 101	)	
3. Ashutosh Surendra Samant	)	
Having his address at : A5/103	)	
Siddharth Nagar CHS,	)	
Off Western Express Highway	)	
Borivali – East, Mumbai – 400 066	)	
Owner of Vehicle No.	)	...Original Opposite Party
-MH-02-CW-9970	)	….Respondents

SHUBHADA SHANKAR KADAM

Digitally signed by SHUBHADA SHANKAR KADAM Date: 2023.03.01 13:47:07 +0530

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Niketan Nakhawa, Advocate for the Respondent Nos.1 and 2.

CORAM : S. G. DIGE, J.

DATE : 16th FEBRUARY 2023.

Judgment. :

1. By way of this appeal, the appellant is seeking exoneration from the liability or alternatively pay and recovery order.

2. 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 holding a valid and effective driving license. The offence was registered under Section 3/181 of the Motor Vehicles Act against the driver. The appellant examined the Investigating Officer as witness to prove that the driver was not holding valid and effective driving license at the time of the accident, but this fact is not considered by the Tribunal and the Tribunal fixed the liability on the appellant- Insurance Company, which is not proper. Learned counsel further submits that to prove the breach of terms and conditions of the insurance policy, the appellant examined the officer of the Insurance Company - Ms. Apurva Bhave but the Tribunal has

not considered the evidence of this witness and wrongly fixed the liability on the appellant, which is not proper. Learned counsel further submits that at the most when there is breach of terms and conditions of the Insurance Policy, there should be pay and recovery order but it is also not been passed. Learned counsel further submits that the income of the deceased is considered @ Rs.9000/- which is on the higher side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent Nos.1 and 2/claimants that the appellant has not examined the officer from the Regional Transport Office to prove that the driver of the offending vehicle was not holding valid and effective driving license. Mere filing the charge-sheet is not sufficient to prove that the driver was not holding effective and valid driving license at the time of the accident. Learned counsel further submits that the appellant has settled "own damage claim" with other parties out of the same accident. After verification and scrutiny, it shows that the appellant has no objection regarding effective and valid driving license of offending vehicle. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. While dealing with the issue of not holding valid and effective driving license by the driver of the offending vehicle, the Tribunal has observed that though the appellant has examined the witness - Ms. Apurva Bhave to prove the breach of terms and conditions of insurance policy and witness - PSI- Bipin Chavan, Investigating Officer of the offence to prove that the driver was not holding an effective and valid driving license at the time of the accident. The Tribunal has observed that mere registering the offence would not be sufficient to prove that the driver was not holding effective and valid driving license at the time of the accident as no person from the office of the Regional Transport Office was examined. The Tribunal has relied upon ***National Insurance Company Ltd versus Ram Rati Devi and Ors 2013 ACJ 583 (Del.)*** In my view though there was a specific defense of the appellant that the driver of the offending vehicle was not holding effective and valid driving license at the time of the accident, the appellant ought to have examined a person from the office of the Regional Transport Office who keep the record of driving license.

No witness was examined from the Regional Transport Office. Moreover, the appellant has settled the claim under 'Own Damage Claim with the insured. Hence I do not see merit in the contention of learned counsel for the appellant that the driver was not holding effective and valid driving license.

6. In respect of income of the deceased, it has come on record that the deceased was a rikshaw driver and he was earning Rs.15,000/- per month. The claimant has stated that the deceased was getting Rs.15,000/- per month but the Tribunal has considered Rs.9,000/- per month. In my view, the deceased was a rikshaw driver and considering the evidence on record, the income considered by the Tribunal is not on higher side and is proper.

7. The Tribunal has awarded 8% interest on the compensation amount. It is the contention of the appellant that it should be 6%. Learned counsel for the respondent Nos.1 and 2/claimants submits that appropriate orders be passed.

8. In view of the above, the appeal is devoid of merit and I pass the following order :

1. The appeal is partly allowed.

2. The claimants are entitled for 6% interest instead of 8% on the compensation amount awarded by the Tribunal.

3. The claimants are permitted to withdraw the amount @ 6% interest from the date of filing claim petition till realisation.

4. The statutory amount along with accrued interest be transmitted to MACT, Mumbai. The parties are at liberty to withdraw it as per Rule.

The appeal is disposed of.

9. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)