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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1155 OF 2016

IFFCO Tokio General Insurance Co. Ltd. ... Appellant

V/s.

1. Arjoo Vasim Naik,
2. Banu Mahamad Naik,
3. Suzan Vasim Naik,
4. Prashant Kashinath Chorge. ... Respondents

Mrs. Jyoti Bajpayee for Appellant.

Mr. Jitendra P. Gor for Respondent No.1.

CORAM : S.G. DIGE, J.

DATED : 8 MARCH, 2023

JUDGMENT:

1. Heard learned counsel for the Appellant and learned counsel for Respondent No.1.

2. The issue involved in this Appeal is pay and recover order passed by the Tribunal. Learned counsel for the Appellant submits that the Appellant has proved before the Tribunal that driver of offending vehicle was not holding effective and valid driving license at the time of accident. There was breach of terms and conditions of policy inspite of that the Tribunal has directed to pay compensation first and recover from the owner of the offending vehicle which is improper. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondents-Claimants submits that it is settled principle of law that in case there is breach of terms and conditions of policy, the insurance company has to pay the compensation and recover from the owner. Learned counsel further submits that the Tribunal has not awarded consortium amount for which the claimants are entitle.

4. I have heard both learned counsel, perused judgment and order. Admittedly at the time of accident, the driver of offending vehicle was not holding effective and valid driving license. Hence, Tribunal has held that there was breach of terms and conditions of insurance policy, on that basis pay and recover order is passed. I do not find any infirmity in it, as it is settled principle of law that if there is breach of terms and conditions of insurance policy, being contractual liability, the insurance company has to pay the compensation amount to the claimants and recover it from the owner of offending vehicle. In respect of awarding consortium amount, it is contention of learned counsel for the Appellant that claimants have not preferred any Appeal for enhancement of compensation, hence they are not entitled for consortium amount in Appeal filed by the Appellant. In my view, it is settled principle of law that claimants are entitled for just compensation. There are three claimants and as per the view of Hon'ble Apex Court in case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.** in Civil Appeal No.9581 of 2018, each claimant is entitled for consortium amount of Rs.40,000/-, so it comes to Rs.1,20,000/-. I pass following order:-

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii). The Claimants are entitled for amount of Rs.1,20,000/-.

- (iii) The Appellant is directed to deposit Rs.1,20,000/- before the Tribunal within four (4) weeks from today.
- (iv) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. Parties are at liberty to withdraw it as per rule.

(S.G. DIGE, J.)