

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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FIRST APPEAL NO. 1341 OF 2019

Reliance General Insurance Co. Ltd.)
 Reliance Centre)
 19, Walchand Hirachand Marg, Bellard Estate)
 Mumbai - 400001)Appellant
 (Original Insurer)

Versus

1. Divya Deepak Kamble)
 Age - 49 years)
 (Org. Claimant No.1)
2. Miss. Darshana Deepak Kamble)
 Age - 17 years)
 (Org. Claimant No.2)
3. Miss. Nikita Deepak Kamble)
 Age- 15 years)
 (Org. Claimant No. 3)
4. Master Atharva Deepak Kamble)
 Age - 10 years)
 (Org. Claimant No. 4)
5. Smt. Suman Kishor Kamble)
 Age - 62 years)
 (Org. Claimant No. 5)

Respondent Nos. 2 to 4 being minors)
 Through their mother applicant no.1)
 All R/o. 7/1202, Government Colony)
 Bandra (E), Mumbai - 400051)

6. Mr. Sachin Shankar Sambhare)
Room No. 7/9 m Dr. B. A. Nagar)
Sadhu T. L. Wasvani Marg)
Cuffe Parade, Colaba, Mumbai - 400005)

(Org. Opps. Party. No.1)

7. Mr. Akshay Dattu Awaghade)
601, Dr. Babasaheb Ambedkar Marg)
Sadhu T. L. Wasvani Marg)
Cuffe Parade, Colaba, Mumbai - 400005)

(Org. Opps. Party No.1)
....Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant

CORAM : S. G. DIGE, J.

DATE : 24th FEBRUARY 2023.

JUDGMENT :

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

2. It is contention of learned counsel for the appellant that there was breach of terms and conditions of insurance policy as driver of offending vehicle was not holding valid and effective driving license at the time of accident, but tribunal has not considered this

fact and has passed the impugned judgment and order. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that though defense was taken by the appellant before the tribunal that driver was not holding valid and effective driving license at the time of accident, but no witness was examined in support of their contentions. Order passed by the tribunal is legal and valid.

4. The learned counsel further submits that the tribunal has awarded consortium amount only to the widow of deceased but has not awarded to the other claimants. Hence, requested to award the consortium amount.

5. I have heard both learned counsel, perused judgment and order passed by the tribunal.

6. While dealing with the issue of driving license. The tribunal has observed that “it is the defense of insurer that driver of offending vehicle was not holding valid and effective driving license at the time of accident”. It is the breach of terms and condition of insurance policy and thus the insurance company is not liable to pay compensation. To prove this contention on behalf insurer neither the

officer of their company nor any officer from the RTO office has been examined. Hence tribunal has held that there was no breach of terms and condition. I do not find infirmity in it, if it was specifically defense of the appellant before the tribunal that there was breach of terms and conditions of Insurance Policy. It was burden on the appellant to prove the said fact, but it was not proved. I do not find merit in the contention of learned counsel for the appellant that driver of the offending vehicle was not holding effective and valid driving license at the time of accident.

7. The claimants are praying to award consortium to other claimants. The tribunal has awarded consortium amount of Rs. 40,000/- to the widow of deceased. It is contention of learned counsel for the appellant that claimants have not preferred appeal for getting consortium amount hence, they are not entitled for it. In my view, Section 168 of Motor Vehicle Act, 1988 states about just and proper compensation. Consortium amount is awarded to the family members of the deceased as parental consortium spousal consortium and filial consortium. There are four claimants to whom consortium amount is not granted 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 of Rs.40,000/- as consortium amount. Hence, I am considering this amount, it comes to Rs. 1,60,000/-.

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

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. The claimants are entitled additional amount Rs. 1,60,000/- @ of 7.5% per annum from 1st October, 2017 till realization of the amount.
 - iii. The appellant is directed to deposit the additional amount along with accrued interest thereon, within six week.
 - iv. The statutory amount be transmitted along with accrued interest to the tribunal. The parties are at liberty to withdraw it.
9. All pending application stands disposed of.

(S. G. DIGE, J.)