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

FIRST APPEAL NO. 304 OF 2018

Reliance General Insurance Company Limited)
Through Its Manager Legal Mr. Khanjan Joshi)
4th Floor, Chintamani Avenue)
Off Western Express Highway,)
Goregaon – East, Mumbai) ....Appellant/
Orig. Opponent No.2

Versus

1. Mr. Jagdhish Vishwanath Pimple)
   Age 64 years,)
   Occupation – Retired) ....Original
   Applicant No.1.

2. Smt. Rupali Jaghish Pimple)
   Age : 34 years)
   Occu : Service) ....Original
   Applicant No.3.

All R/at : Plot No.36, Atlas Copco)
Housing Society, Nehrunagar, Pimpri)
Pune – 18)

3. M/s Farooque Transport)**....(Dismissed**
   Office at : Plot No.6, 541/542) **vide Reg. Judicial**
   Ram Nagar, 1 ground floor)**Court's Order dated**
   Office at : 158 Digha Kalwa, Thane) **13/01/2020)**
   ....Ori. Opp. No.1

4. Mr. Manoj Prabhakar Mhatre)

Age – 35 years, Occu. Business)
R/at Saikripa Apartment)
Plot No. 203, Anandnagar)
Uran, District – Raigad) ....Ori. Oppo. No.2

5. Mr. Dayanand Chandrakant Patil)
Age – Adult, Occu. Business)
At Post – Bokadvira, Tal. Uran)
District – Raigad.) .... Ori. Oppo. No.3

....**Respondents**

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
Mr. Om Prakash Singh for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER, 2023.

JUDGMENT. :

1. Issues involved in this appeal are driver of insured vehicle was not holding valid and effective driving licence and income of deceased is considered on higher side.

2. It is contention of learned counsel for the Appellant that the driver of insured vehicle was not holding effective and valid driving license. To prove the said fact, the Appellant has examined Senior Clerk from RTO office. He has stated that driver was holding the effective and valid driving licence during period from 16th April, 2002

to 15th April, 2005. Thereafter, he was not holding any valid driving license but, this fact is not considered by the Tribunal and has wrongly fixed liability on the Appellant/Insurance Company. Learned counsel further submitted that, the Tribunal has considered monthly income of the deceased on higher side which is not proper. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that no opportunity of cross-examination was given to cross-examine the witness from RTO office. The deceased was getting salary of Rs.75,000/- per month and the witness was examined to prove the said salary, on that basis Court has awarded the compensation. The judgment and award passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and award passed by the Motor Accident Claims Tribunal, Pune (for short "the Tribunal").

5. In respect of issue to driving licence, the witness Prashant

Virpur Senior Clerk of RTO Office Pen District-Raigad has been examined. He has stated Manoj Mahatre was holding effective and valid driving licence for the period of 16th April, 2002 to 15th April, 2005. It appears from record that this witness was not cross examined by the claimants' advocate as he was not present. The Hon'ble Apex Court in the case of ***Nirmala Kothari vs. United India Insurance Company Limited, Civil Appeal Nos. 1999-2000 of 2020*** has held that if insurance company takes defense of invalid or fake driving licence, it is onus on them to prove it. While dealing with this issue the Tribunal has observed that the Appellant/Insurance Company did not give any notice either to registered owner and the car driver or to the offending truck driver directing them to produce the driving licence, if any, thus insurance company did not give opportunity to opponent nos.2 & 3 to produce the driving licence of car driver. Therefore, insurance company failed to establish that opponent no.3 registered owner of the car will fully breached the terms and conditions of insurance policy.

6. The tribunal further observed that, it is not case of insurance company that the car driver was not skilled driver. On the

contrary, he was having the driving licence but it was not renewed after 15th April, 2005. Therefore the Tribunal has fixed liability on insurance company. I do not find any infirmity in it.

7. In respect of income of deceased, PW-1 Jagdish V. Pimple has stated that deceased was working with Tek Plus Engineering India Private Limited as a Design Engineer he was Director and his gross annual salary was of Rs.9,00,000/-. To support the evidence of PW-1 claimants examined PW-2 Ravi Patil director of Mai Indolin Consulting Private Limited and authorized signatory of Tek Plus Engineering India Private Limited. He has stated that deceased was the employee of Tek Plus Engineering India Private Limited. The agreement between company and deceased is at Exhibit-64. PW-2 has stated that deceased was getting monthly salary of Rs.75,000/- inclusive of all perks. In cross-examination this witness admitted that TDS and Professional Tax were not deducted. Considering the evidence on record and after deducting Income Tax and Professional Tax. The Tribunal has considered monthly salary of deceased at Rs.59,780/-. I do not find any infirmity in it.

8. Considering the above reasons, the appeal is devoid of merit and I pass following order.

ORDER

i. Appeal is dismissed.

ii. Respondents/Claimants are permitted to withdraw the amount along with accrued interest deposited by the Appellant.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)