

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.170 of 2023

Reliance General Insurance Company	]	
Ltd.,	]	
Chintamani Avenue, 4 th Floor,	]	
Akurli Road, Off. Western Express	]	
Highway, Near Virvani Industries Estate,	]	
Goregaon (E), Mumbai- 400 063.	]	
Ins. Policy No.:- 1104262348030421	]	Appellant
Valid from:- 19.10.2016 to 18.10.2017	]	(Original Insurer)

Versus

1	Naina Manahar Soni,	]	
	Aged 51 years, widow of the deceased,	]	
2	Shital Manohar Soni,	]	
	Aged 36 years, Daughter of the deceased	]	
	All residing at :-Room No:-28,	]	Respondents
	Plot No:-202, Sagar Co-op. Hsg. Soc.,	]	(Org.Applicants)
	Charkop, Sector-02, Kandivali (W),	]	
	Mumbai – 400 067.	]	
3	Mr. Amit Bharat Doshi,	]	
	Add:-C-82, Vardhaman Nagar,	]	
	Nursing Lane, Malad (W),	]	
	Mumbai – 400 064.	]	...Respondents

Ms. Kalpana Trivedi, Advocate for the Appellant.

Mr. Deepak Shriram Kilaje, Advocate for the Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

ORAL JUDGMENT :

1. The issue involved in this appeal is at the time of accident, deceased was holding learner's license.

2. It is contention of learned counsel for the appellant-Insurance Company that, at the time of the accident the driver of offending vehicle was holding learner's license. Learned counsel further submitted that when the driver of the offending vehicle was holding learner's license, he should have been accompanied by a person having valid and effective driving license but this fact is not considered by the Tribunal and has wrongly fixed the liability on the insurance company. There was breach of terms and conditions of the insurance policy. The Tribunal should have passed pay and recovery order but it was not passed. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 and 2/claimants that the driver of the offending vehicle was holding learner's license. As per the view of Hon'ble Apex Court in **National Insurance Co. Ltd. Versus Swaran Singh 2004(3) SC 297**, the person who holds the learner's license cannot be considered as an unskilled driver. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal").

5. Admittedly, at the time of the accident, the driver of the offending vehicle was holding the learner's license. It is contention of

learned counsel for appellant-insurance company that the said driver should have been accompanied by a person having a valid and effective driving license. In my view, the Hon'ble Apex Court in **Swaran Singh (supra)** has held that the person holding learner's license would also come within the purview of 'duly licensed' as such a license is also granted in terms of provisions of the Motor Accident Claims Tribunal Act, 1988 and the rules framed thereunder. In present case, the deceased was holding learner's license, he cannot be termed as unskilled driver.

The Tribunal has awarded consortium amount of Rs.10,000/-, Rs. 10,000/- for funeral expenses and Rs.10,000/- for loss of estate and Rs.20,000/- for loss of love and affection, it is on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48,000/- as consortium, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate. There are two claimants, so the total amount comes to Rs.1,32,000/-. If Rs.50,000/- awarded by the Tribunal is deducted from Rs.1,32,000/-, it comes to Rs.82,000/-. The claimants are entitled for this amount.

6. In view of above, I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos.1 and 2/claimants are entitled for enhanced compensation of Rs.82,000/-@ 7.5% interest

per annum from 1st November 2017 till realisation of the amount.

3. The appellant-Insurance Company shall deposit the enhanced amount of Rs.82,000/- along with accrued interest thereon within eight weeks from the receipt of this order.
4. Respondent Nos.1 and 2/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)