IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1165 OF 2022

The Oriental Insurance Co. Ltd. T. P. Hub, Mumbai (120021) State Bank Building Annex, 3rd Floor Bank Street, Near Horniman Circle, Fort, Mumbai-400023. And also at Kudal - Sindhudurg	)))))))	….Appellant (Org. Insurer/Opp. No.1)

Versus

1	Jagruti Jayawant Bidaye Aged: 44 presently, Occ: Houswife	))	
2	Disha Jayawant Bidaye Ag: 8 years, Occ: Education Both residing at Bidayewadi, Nandgav, Kankavli, Sindhudurg	)))))	
3	Shubham Ramchandra Bidaye Age : 21 years, Occ: Business At/post – Bidayewadi, Nandgav, Kankavli, Sindhudurg	))))	
4	Aniket Laxman Bidaye Age: 24 years, Occ: Driver Residing at Kalmath, Sutarwadi, Kankavli, Sindhudurg – 416604	))))	….Respondents

along with

FIRST APPEAL NO. 1294 OF 2022

The Oriental Insurance Co. Ltd. T. P. Hub, Mumbai (120021) State Bank Building Annex, 3rd Floor Bank Street, Near Horniman Circle, Fort, Mumbai – 400023. And also at Kudal – Sindhudurg	)))))))	….Appellant (Org. Insurer/Opponent No.1)

Versus

1	Pooja Devendra Bidaye Aged 36 presently, Occ: Housewife	))	
2	Diksha Devendra Bidaye Age: 13 years, Occ: Education	))	
3	Durva Devendra Bidaye Age: 7 years, Occ: Education	))	
4	Sunanda Atmaram Bidaye Age: 67 years, Occ: Housewife All residing at Bidayewadi, Nandgav, Kankavli, Sindhudurg	)))))	
5	Shubham Ramchandra Bidaye Age: 21 years, Occ: Business At/post – Bidayewadi, Nandgav, Kankavli, Sindhudurg	))))	
6	Aniket Lakshman Bidaye Age: 24 years, Occ: Driver Residing at Kalmath, Sutarwadi, Kankavli, Sindhudurg-416604	))))	….Respondents

Ms. Chinmayee Ghag i/b Mr. Nishant Rana, Advocate for the Appellant-Insurance Company in both First Appeals.
Ms. Simran R. Grover a/w Mr. Nayan Mohar, Mr. Satyasrikant V. i/b Khaitan Legal Associate, Advocate for the Respondent Nos. 1 & 2 in First Appeal No.1165 of 2022.
Ms. Ketki Gokhale i/b Mr. A. M. Gokhale, Advocate for the Respondent Nos. in First Appeal No.1294 of 2022.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

1. The issue involved in both the appeals is the persons traveling in the offending vehicle were more than capacity.

2. Both the appeals are against the Judgment and Order passed by the Tribunal out of the same accident, hence, I am deciding it by this common judgment.

3. It is contention of learned counsel for the appellant-Insurance Company that the offending vehicle, in which, the deceased was travelling was carrying persons more than the capacity. There was breach of terms and conditions of the insurance policy but this fact is not considered by the Tribunal and has wrongly fixed the liability on the appellant, which is not proper. Hence, requested to allow the appeal.

4. It is contention of learned counsel for respondents Nos.1 and 2/claimants in First Appeal No.1165 of 2022 that at the time of accident, six persons were traveling in the offending vehicle, out of those, there was death of two persons in the said accident. As per the view of Hon’ble Apex Court in the case of ***United India Insurance Co. Ltd. versus K. M. Poonam and ors. 2011 ACJ 917,*** all those persons be covered as per number of persons traveling in that vehicle. Learned counsel further submitted that the Tribunal has passed legal and valid order. Hence, no interference is required in it.

5. Learned counsel for claimants in First Appeal No.1294 of 2022 adopted the arguments of learned counsel for claimants in First Appeal No.1165 of 2022. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side to the claimants, it be awarded.

6. I have heard all learned counsel, perused the judgments and orders passed by Motor Accident Claims Tribunal, Sindhudurg (for short “the Tribunal”).

It is the claimants’ case that on 23rd June 2018, the claimants were travelling in tempo bearing No.MH-07-X-1790 from Nandgaon to Mumbai with jackfruits. The driver of the said tempo was driving the tempo rashly and negligently. On a curve, he lost control over the tempo and the said tempo turtled on road. In the said accident, the husband of claimant No.1 in First Appeal No.1165 of 2022 and husband of claimant No.1 in First Appeal No.1294 of 2022 died. An offence was registered against the tempo driver.

It is contention of learned counsel for appellant-Insurance Company that at the time of accident, six persons were traveling in the tempo, which was a breach of terms and conditions of the insurance policy. As per the terms and conditions of insurance policy, three persons were permitted to travel in the offending tempo. While dealing with this issue, the Tribunal has observed that in the accident, two persons have died and as per Exhibit-29, there was permission to carry three passengers in the tempo. Though six persons were traveling in tempo, two persons died in the said accident, which comes in the category of three persons which are permitted to travel in the tempo. I do not find infirmity in it. In my view two persons who died in the accident comes under the category of permissible persons traveling in the tempo. It is not denied by the Insurance Company that at the time of accident, the offending tempo was not insured with appellant – Insurance company. As per the view of Hon'ble Apex Court in the case of ***United India Insurance Co. Ltd (supra)***, all these persons be covered as per the number of persons travelling in that vehicle. Hence, Appellant-Insurance Company is liable to pay the compensation.

In both the appeals, the Tribunal has awarded consortium to one claimant only. 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.48000/- as consortium amount.

In First Appeal No.1165 of 2022, the Tribunal has granted consortium amount to claimant No.1 only. There are two claimants. As such, Claimant No.2 is entitled for consortium amount of Rs.48,000/-.

In First Appeal No.1294 of 2022, the Tribunal has granted consortium amount to claimant No.1 only. There are 4 claimants. As such, remaining three claimants are entitled for consortium amount of Rs.1,44,000/- (Rs.48,000/- each).

6. Considering the above reasons, I pass following order :

O R D E R

1. Both appeals are dismissed. No order as to cost.
2. In First Appeal No.1165 of 2022, claimant No.2 is entitled for an additional amount of Rs.48,000/- towards

consortium @ 7.5% per annum from the date of filing claim petition till realisation of the amount.

3. In First Appeal No.1294 of 2022, the claimants are entitled for an additional amount of Rs.1,44,000/- towards consortium @ 7.5% per annum from the date of filing claim petition till realisation of the amount.

3. The appellant-Insurance Company is directed to deposit the additional amount in both appeals along with accrued interest thereon within four weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount be transferred 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.)