IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 65 OF 2010

	The National Insurance Co. Ltd. (A Company incorporated under the Companies Act, 1956) and having it office at, MBRO, 5th Floor Sterling Cinema Building, 65, Muzban Road, Mumbai – 400 001.	)	….Appellant (Original Insurer)

Versus

1.	Santosh Shrikant Patil Age : 15 years, Occupation:- Education	)	….Respondent No.1
2.	Priyanka Shrikant Patil Age : 13 years, Occupation – Education Respondent No. 1 & 2 are minor through Court Guardian Chandrakant Dadasaheb Pawar, Age : 49 yrs, Occupation: Service. Residing at 6, Chinnapura Peth, Satara	)	….Respondent No.2.
3.	Chandrakant Dadasaheb Pawar Age : 49 years, Occupation: Service Residing at 6, Chinnapura Peth, Satara	)	….Respondent No.3.

Ms. D. Shalini Shankar, Advocate for the Appellant.
None present for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd JANUARY, 2024.

Oral Judgment :

1. Though respondents are served, none present for respondents. The appeal is of the year 2010 and the year of accident is of 2002, hence, I am deciding this appeal on merit.

2. The issue involved in this appeal is breach of terms and conditions of insurance policy.

3. It is contention of learned counsel for the appellant that the policy issued to the offending vehicle was act only policy. In the said policy, the pillion rider was not covered and no additional premium was paid for the pillion rider but this fact is not considered by the Tribunal and has awarded compensation to the pillion rider, which is not proper. Hence, requested to allow the appeal.

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

5. While dealing with the issue of pillion rider, the Tribunal has observed that the insurance company has not produced any evidence on record to show whether the said policy covers the pillion rider or not. The Tribunal has further observed that the liability of the insurance company in a case of this nature is not extended to a pillion rider unless requisite amount of premium is paid for covering his or her risk and the legal obligation arising out of Section 147 of the Motor Vehicles Act, 1988 cannot be extended to injury or death of the owner of the vehicle or the pillion rider. But if the requisite amount of premium is paid for covering his or her risk, the legal obligation arising out of Section 147 of the Motor Vehicles Act, 1988 can be extended up to the risk of pillion rider. Therefore, unless the insurance policy is produced on record, it cannot

be said that there was a breach of insurance policy. I do not find infirmity in it. If it was the defense of the appellant-Insurance Company before the Tribunal that there was breach of terms and conditions of insurance policy, it was the liability of the appellant-Insurance Company to prove it through evidence but no evidence was led before the Tribunal by appellant-Insurance Company. Hence, I do not find merit in contention of appellant.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos.1 and 2/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. 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.)