IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1517 OF 2013

The New India Assurance Company Limited]
1806, Ashirwad Bhavan, Near Post Office Kudal,]
Taluka – Kudal, District: Sindhudurg]
.... Appellant (Org. Res. No.1/Insurer)

Versus

1. Lavu Tukaram Tulaskar,]
   Age about 60 years,]
   Occupation: Farmer.]

2. Lalita Lavu Tulaskar,]
   Age about 54 years,]
   Occupation – Household]
   Both R/o. Kerwada, Shiroda,]
   Taluka – Vengurla, Dist.- Sindhudurg.]
   .... Orig. Claimants

3. Sadashiv Harishchandra Chavan]
   Age about 20 years,]
   Occ: Rickshaw driver,]
   R/o. Deep Darshan Apartment,]
   Sawantwadi, Salaiwada,]
   Taluka – Sawantwadi,]
   District: Sindhudurg]
   .... Respondents (Org. Applicant & Resp. No.2)

Mr. D. R. Mahadik, for the Appellant.
Mr. Mahesh Vijay Rawoo, for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th NOVEMBER, 2024.

ORAL JUDGMENT. :

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

2. It is contention of learned counsel for the Appellant that the driver of offending vehicle was holding LMV driving licence, for “non transport vehicle” whereas, he was driving a transport vehicle but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the Tribunal has passed well reasoned order, and no interference is required in it. Moreover, the issue of holding an LMV licence for non transport vehicle and driving a transport vehicle is no more *res-integra*. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the judgment

and order passed by the Motor Accident Claims Tribunal, Sindhudurg (for short "the Tribunal").

5. Admittedly, at the time of accident, the driver of offending vehicle was holding LMV driving licence, which is at Exhibit-34.

6. It is contention of learned counsel for the Appellant/Insurance Company that there was breach of terms and condition of Insurance Policy, as the driver was not holding transport licence and he was driving transport vehicle. In my view, this issue is no more *res-integra.* In view of observations of Hon'ble Apex Court in the case of ***M/s. Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi (2024) 1 SCC 818***. The Tribunal has awarded consortium amount on lower side. 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 for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are two Claimants, so it comes to Rs.1,32,000./-. The Claimants/Respondents are entitled for this amount.

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

ORDER

i. Appeal is dismissed.

ii. The Claimants/ the Respondent Nos.1 and 2 are entitled for Rs.1,32,000/- @ 7.5% interest from 1st November, 2017 till realisation of the amount.

iii. The Appellant/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within four weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The Claimants shall pay the deficit Court's fee, if any.

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

vii. Record and Proceedings be sent back to the Tribunal.

8. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)