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

FIRST APPEAL NO. 634 OF 2023

1. Savita Bhupesh Pujari)
   Age: 24 years, Occ: Houswife)

1. Yashraj Bhupesh Pujari)
   Age: 1 years, Occ: Nil)

2. {Applicant No.2 is Minor hence through)
   Mother I.e Savita Bhupesh Pujari})

3. Nivrutti Laxman Pujari)
   Age: 63 years, Occ: NIL)

4. Hirabai Nivrutti Pujari)
   Age- 56 years, occ: Housewife)

All/ R/at – Room No. 1723, Ram)
Maruti Nagar, Balkum, Thane {West}.
....Appellants
(Orig. Applicant)

Versus

1. IFFCO TOKIO General Insurance Co. Ltd.)
   AFL House, 2nd Floor, Lokbharti Complex)
   Marol Maroshi Road, Andheri {East},)
   Mumbai – 400 059)

{Insurer of Vehicle bearing No.-MH-04-AL-4542})
Policy No. 4010008).(Orig. Insurer)
Valid from 21/10/2008 to 20/10/2009})

2. Chintamani B. Patil)
Age: Adult, Occ: Owner,)
R/at House No.123/002, Gothiwadi,)
Post-Ghansoli, Navi Mumbai)
(Org. Insured)
....Respondents

Mr. Jitendra Gor, Advocate for the Appellant.
Mr. Vikrant Parashurami, Advocate for the Respondent No.1.
Ms. Ketki Gokhale i/b Mr. Avinash M. Gokhale, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is liability of payment compensation.

2. It is contention of learned counsel for the Appellant that the Tribunal has held that at the time of accident driver of offending vehicle was not holding effective and valid driving licence and Tribunal has directed owner of the vehicle to pay the compensation, which is erroneous. Learned counsel further submitted that it has come in the evidence of R.T.O. Officer that the driver of offending

vehicle was holding the licence at the time of accident but, it was not renewed. In cross-examination, the said witness has admitted that they have no record, if the driving licence is renewed by smart card, it shows that driver was holding the licence but, the Tribunal has not considered this fact and passed the impugned order. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount awarded on lower side, it be awarded. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondent No.1/Insurance Company vehemently submitted that to prove the defense taken by the insurance company, the Officer from R.T.O. Office, Thane has been examined, he has categorically stated that as per their record, after year 2007, the licence of the driver of offending vehicle was not renewed. It proves that driver was not holding effective and valid driving licence at the time of accident. The Tribunal has considered all the aspects and on that basis the judgment and order is passed and no interference is required in it.

4. Learned counsel for the Respondent No.2/owner of the

offending vehicle submitted that driver was holding effective and valid driving licence at the time of accident but this fact is not considered by the tribunal. Hence, requested to allow the Appeal.

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).

6. To prove the defense, the insurance company has examined DW-1 Achyut Patlewar Officer from R.T.O. office, Thane. He has stated that as per their record, licnece was issued to Maula Mohd. Husein Shaikh, Ghansoli for a period of 20 years. Thereafter, he had applied for heavy goods vehicle on 25th July, 1997 and it was issued to him for a period of three years, that is until 24th July, 2000. It was further renewed until 7th August, 2003 again, it was renewed for 24th October 2003 to 23rd October, 2007. As per their record thereafter, the licence was not renewed, extract of register are at Exhibit- 83 and 84. In cross-examination, this witness admitted that if licence has been renewed by issuing smart card, there will be no entry in register as it is computerized. The licence is renewed for

heavy vehicle for the period of three years. The driving licence issued by R.T.O. office Thane can even be renewed by R.T.O. authorities of other cities. As per our register, the driving licence has already been expired and it has not been cancelled. He does not know that Maula Shaikh renewed his driving licence by way of smart card.

7. While dealing with this issues, the Tribunal has observed that at the time of accident the licence was not renewed hence, Tribunal has exonerated the insurance company from paying compensation and has fixed liability on the owner of offending vehicle. In my view, it is settled principle of law that if, driver of offending vehicle was not holding effective and valid driving licence and if the vehicle was insured, in that case, the insurance company is liable to pay compensation and recover it from the owner of the vehicle. In present case, owner of offending vehicle has not preferred appeal against the judgment and order of the Tribunal. The Tribunal has considered monthly income of the deceased at Rs.8,000/- per month but, the Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance***

Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)., the claimants are entitled for 40% future prospects. The consortium amount is awarded 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/- for consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

8. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.8,000/-
Add: 40% future prospects	Rs.3,200/-
Total	Rs.11,200/-
Less ¼ deduction	Rs.2,800/-
Total monthly income	Rs.8,400/-
Annual Income	Rs.1,00,800/-
Multiplier 17 (Rs.1,00,800/- X 17)	Rs.17,13,600/-
Medical Bill	Rs.1,67,380/-
Consortium amount (Rs.48,000/- X 4 Claimants)	Rs.1,92,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total Compensation	Rs.21,08,980/-
Less awarded by the tribunal	Rs.11,10,000/-
Enhanced amount	**Rs.9,98,980/-**

9. In view of above, I pass following order.

ORDER

i. Appeal is partly allowed.

ii. The Claimants are entitled for enhanced amount of Rs.9,98,980/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount, out of this amount Rs.1,92,000/- as consortium amount. The Claimants are entitled @ 7.5% interest on this amount from 1st November, 2017, till realisation of the amount.

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

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

v. The insurance company is at liberty to to recover the amount fixed by the Tribunal i.e. Rs.21,08,980/- along with accrued interest thereon. The amount awarded by the Tribunal 11,10,000/- and enhanced amount of Rs.9,98,980/- along with accrued interest thereon from the Respondent No.2/Owner of the vehicle.

vi. The Claimants shall deposit deficit Court fees on enhanced amount, as per Rule.

10. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)