IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.369 OF 2004

New India Assurance Company Limited, }
Kanpur, Uttar Paradesh }
(Summons be served on the Manger, Satara }
Branch) } **...Appellant**

Versus

1. Smt.Minakshi W/o Sanjay Mali }
Age-19 years, Occ : Nil }

2. Dattu Ganpati Mali }
Age-Adult, Occ : Nil }

(Amendment as per order dated 14/02/2006 subsequent order dated 09/05/2024

2a. Smt.Indumati Dattu Mali }
age-68 years, Occ : Household }

2b. Shri.Sunil Dattu Mali }
Age-35 years, Occ: Service }
Both 1a and 1b R/at Sangli Wadi, Taluka-Miraj, District-Sangli }

2c. Smt.Sajakka Sidhu Mali }
Age-50 years Occ : Household }
R/o. Devrshtre, Taluka-Kadegaon, }
District-Sangli. }

3. Sou.Indumati Dattu Mali }
Age-Adult, Occ : Household }

(Appeal against R/No.3 is abated as per order dated 09/05/2024)

This order is corrected as per speaking to the minutes of order dated 9th May 2024

4. Sunil Dattu Mali Age-22 years, Occ : Nil All R/at Sangliwadi, Taluka-Miraj, District-Sangli.	} } } }	
5. Kanhaiya Dhrupdeo Yadav Age-22 years, Occ : Driver, R/at Kathavatiya, District-Gijipur (UP)	} } }	As per Order dt.27-6-14 of Registrar J-II R5 is dismissed
6. Shri.Mansingh Sirpat Singh Age-Adult, R/at 140/A/8, Vijaykumar, Kanpur (UP)	} } } } }	As per Order dt.27-6-14 of Registrar J-II R6 is dismissed **...Respondents**

Ms.Urmila Sanil, for the Appellant.
Mr.Y.D. Patil i/b Mr.Vikas Mali, for Respondent Nos.2 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th MARCH 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is Insurance Policy produced on record is fake and fabricated.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Insurance Policy produced on record in respect of the offending vehicle was fake and fabricated. The said policy shows five digits policy number whereas, general policy number is 13 digits. The witness was

examined by the Appellant to prove that the said policy is fake, but Tribunal has not considered evidence produced on record and has passed impugned order. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents-Claimants that, the Policy produced on record was genuine. The witness of the Appellant-Insurance Company in cross-examination has admitted that, the said Policy was issued from Kanpur Office and the policy period was from 20th September 1993 to 19th September 1994 and the register produced on record by the witness was from 1st March 1994 to 1999. There was no record of the Policy produced on record. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

5. It is contention of the learned counsel for the Appellant that, Insurance Certificate produced on record is xerox

copy and it is fake Insurance Certificate. To prove it the Appellant has examined Ajay Kumar Rai at Exhibit-53, Assistant Manager New India Insurance Company, Kanpur. He has stated that the documents like Insurance Policy, Cover-note are printed and supplied to other branches by Regional Office at Kanpur. Usually, 50 Insurance Certificates are in one book. It is noted from Certificate produced on record that it was for period from 1st March 1994 to 1999. Copy of the Insurance Certificate is at Exhibit-54, it is not from this book (Register brought by him). According to him, Policy number issued by their Office is of 13 digits. Insurance Certificate number produced on record is of five digits, therefore, this Certificate is fake one. In cross-examination this witness admitted that he has no knowledge about department of Kanpur Office, who issued Insurance Certificate. He has also no knowledge of authority who issued certificate. He does not know except knowledge of stationary department. He was serving in stationary department since 1 and ½ years. He admits seal (logo) of Insurance Company on the certificate at Exhibit-54. Name of his company is mentioned on this certificate. He further admitted that in this Certificate name of insured is stated along with his address. Other details are also stated therein like number of vehicle etc. Policy period is also stated in this certificate. He admits that Certificate at Exhibit-54 is issued from his Kanpur Office. He further admitted that except his words, there is no evidence to say that policy issued by the Insurance Company is in 13 digits. He does not know about action taken by their office regarding fake Insurance certificate.

6. While dealing with the issue of fake insurance policy, the Tribunal has observed that as, there was burden on the Insurance Company to prove their defence but considering the evidence produced on record, the Insurance Company failed to discharge the burden as, D.W-1 Shri.Rai admits in his cross-examination that Policy was issued from his Kanpur Office. I do not find infirmity in it.

7. In my view, the witness D.W.-1 in his evidence has stated that the register which he had brought before the Court was from 1994 whereas, the policy produced on record was issued in 1993. Moreover, the witness D.W-1 in cross-examination has

admitted that he has no knowledge about authority who issued certificate and he has no knowledge of such person or their signatures and he does not know except knowledge of Stationary department. It shows that Insurance Company has not examined the witness who knew about issuance of Insurance Policy and has not placed evidence before Court to prove that the policy produced on record was fake.

8. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram[1],*** each claimant is entitled for Rs.48,000/- as consortium amount. There are four Claimants, it comes to Rs.1,92,000/-, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The Tribunal has awarded Rs.10,000/-, if this amount deducts from the amount awarded by this Court comes to Rs.2,18,000/-. The Claimant's are entitled for amount of Rs.2,18,000/-

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

1 2018 ACJ 2782 (SC)

ORDER

(i) The Appeal is dismissed.

(ii) The Claimants are entitled for enhanced amount of Rs.2,18,000/- @ 7.5% interest per annum from 1st November 2017 till realization of the amount.

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

(iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(v) The Claimants shall pay deficit Court Fees on enhanced amount, as per Rules.

(vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)