

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE SIDE JURISDICTION**  
**FIRST APPEAL NO. 489 OF 2021**

IFFCO Tokio General Insurance Co. Ltd., Through ....Appellant  
its officer Neerai Kumar Jain Plot No. c-6, NCL (Ori.Oppo.No.2)  
Premises, 1<sup>st</sup> Floor, Bandra-Kurla Complex,  
Bandra(East) Mumbai – 400 051

**Versus**

1. Ganesh Namdev Dagade  
Age 24 years, son of the deceased

R/o. Netaji Subhash Nagar Near Kamraj Nagar,  
Eastern Express Highway Ghatkopar (East)  
Mumbai- 400075.

2. Anil Tulshiram Marachande  
R/o 37, Old Ramabadi Ambedkar Nagar V.N.  
Mehta Marg, Ghatkopar (East) Mumbai 400075  
Maharashtra

... Respondents.

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Mr. Rajesh Kanojia i/by Res Juris, Advocate for the Appellant.  
Mr. T. J. Mendon, Advocate for the Respondent No. 1.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 6<sup>th</sup> FEBRUARY, 2024.**

**ORAL JUDGMENT. :**

1. The issues involved in this appeal are at the time of accident the driver of offending vehicle was not holding effective and valid driving license and the driver of the offending vehicle was under

the influence of liquor.

2. It is contention of learned Counsel for the Appellant that at the time of accident the driver of offending vehicle was not holding effective and valid driving license. To prove it, investigating officer was examined but, his evidence was not considered by the Tribunal. Learned Counsel further submitted that at the time of accident, driver of offending vehicle was under the influence of liquor, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned Counsel for Respondent/Claimant that to prove the defense that driver of offending vehicle was not holding effective and valid driving license at the time of accident, no officer from RTO office is examined no any medical certificate produced on record to show that driver of offending vehicle was under the influence of liquor. The Tribunal has considered all the aspects and on that basis Judgment and Order is passed, no interference is required in it.

4. I have heard both learned Counsels, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal").

5. It is contention of learned Counsel for the Appellant that

at the time of accident, driver of offending vehicle was not holding valid and effective driving license but, to prove said fact, no witness from RTO office is examined by the Appellant/Insurance Company. Hence, I do not see merit in it.

6. It is contention of learned Counsel for the Appellant that at the time of accident, driver of offending vehicle was under the influence of liquor. To prove this fact, Investigating Officer was examined but no medical evidence or medical report is produced on record to show that the driver of offending vehicle was under the influence of liquor, hence, I do not see merit in it. Learned Counsel for the Appellant submitted that the Tribunal has awarded consortium amount on higher side under the head of love and affection Rs. 1 lakh and for funeral expenses Rs. 25,000/-. 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 and Rs. 18,000/- for funeral expenses and Rs. 18,000/- for loss of estate, the total of it comes to Rs. 84,000/-, if this amounts deducts from the amount considered by the Tribunal i.e. 1,25,000/- it comes to Rs. 41,000/- this is excess amount.

7. In view of above, I pass following Order.

**ORDER**

- a) The Appeal is partly allowed.
  - b) The Appellant-Insurance Company is permitted to withdraw Rs.41,000/- along with proportionate interest thereon out of the deposited amount.
  - c) The Respondent-Claimant is permitted to withdraw balance amount with proportionate interest thereon.
  - d) The statutory amount be transmitted to the Tribunal alongwith accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
8. All pending applications, if any, stand disposed off.

**(SHIVKUMAR DIGE, J.)**