IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 928 OF 2017

The New India Assurance Co. Ltd.,)
87, M. G. Road, New India Bhavan,)
Fort, Mumbai 400 001.)
Policy Issuing Office:)
The New India Assurance Co. Ltd.,)
B. H. Road, Tumkur, Karnataka) ….Appellant
(Orig. Opp. No.2)

Versus

1 Susheela Chandrashekhar Yadav)
Age: 40 years, widow of deceased)

2 Nitesh Chandrashekhar Yadav,)
Age: 18 years, Son of deceased)

3 Hitesh Chandrashekhar Yadav,)
Age: 15 years, Minor son of deceased)

4 Jyotsana Chandrashekhar Yadav)
Age: 13 years, Minor daughter of)
deceased)

5 Dukharan Nandu Yadav,)
Age: 68 years, Father of deceased)
All. Resi. At – 405, Kaveri CHS, Rehab)
Bldg. No.2, Tape Village, P.W. D. Office,)
Andheri (W), Mumbai-400058) ...Respondents
(Org. Applicants)

6 Mansoor Ibrahim Basa)
S/o. Ibrahim Basa,)
Janatha Colony, Maralur Dinne,)
Tumkur, District – Tumkur,)
Karnataka – 572 105) ….Respondent
(Org. Opp. No.1)

Mr. Shubham Misar, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent Nos. 1 to 5/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant-Insurance Company that at the time of the accident, the driver of the offending vehicle was not holding driving license. The driver was charge-sheeted under Section3/181 of the Motor Vehicles Act, 1988 but this fact is not considered by the Tribunal and has passed the impugned order, which is not proper. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos. 1 to 5/claimants that no witness was examined to prove that the driver of the offending vehicle was not holding effective and valid driving license. Moreover, no notice was issued to the owner of the offending vehicle. The order passed by the Tribunal is legal and valid.

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

5. To prove the defense taken by the appellant-Insurance Company that the driver of the offending vehicle was not holding effective and valid driving license at the time of accident, no witness was examined by the appellant-Insurance Company except their officer. The said

witness in his cross-examination admitted that, on the basis of charge-sheet, filed by the police, he is stating that the driver was not holding valid and effective driving license. While dealing with the issue, the Tribunal has observed that no evidence was produced on record to show that the notice was issued to the owner of the offending vehicle stating that the driver was not holding effective and valid driving license as well as concerned RTO officer was not examined. I do not find infirmity in it. In my view, to prove the defence taken by them the appellant should have examined officer from RTO office or the Investigating of the crime registered against driver of offending vehicle.

6. The Tribunal has awarded total consortium amount of Rs.1,25,000/-. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and. Rs.18000/- for funeral expenses. There are five claimants.

Considering the above calculations, the claimants are entitled for following compensation :

Dependency	Rs. 6,98,880.00
Consortium (Rs.48,000/- x 5 claimants)	Rs. 2,40,000.00
Funeral Expenses	Rs. 18,000.00
Loss of Estate	Rs. 18,000.00
Total Compensation	**Rs. 9,74,880.00**
Amount granted by Tribunal	Rs. 8,25,000.00

Enhanced Amount **Rs. 1,49,880.00**

Respondent Nos.1 to 5/claimants are entitled for enhanced amount of Rs.1,49,880/-.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The respondent Nos.1 to 5/claimants are entitled for enhanced amount of Rs. 1,49,880/- @ 7.5% interest per annum from 1st November 2017 till realisation of the amount.
3. Appellant/Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight week after the receipt of this order.
4. The respondent Nos.1 to 5/claimants are permitted to withdraw the enhanced 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.)