IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 918 OF 2010

1. The New India Assurance Co. Ltd. Through Manager, Shivardhan Branch, Dist. Raigad.	….Appellant Org. Resp. No. 2

Versus

1. Shweta Subhash Chalke age 43 years Occ-Household	….Respondent No. 1 to 3 are the Orig Applicants No. 1 to 3
2. Master Sandesh Subhash Chalke age- 15 years occ-student.	
3. Master Sanket Subhash Chalke age- 7 years, occ-student	
Abov nos. 2 and 3 minors through guardian Applicant No. 1 all residing at Saichhaya Apartment, Z wing, Flat No. 11, CSC road, Opp. Sudhindranagar Society, Dahisar (East) Mumbai-68.	
4. Suchita Arvind Shetye Aged about 35 years, Occ- Bus Owner, Residing at 33/3, Manri Conner, Gokhale Road Prabhadevi, Mumbai 25.	Org Respondent No. 4 ….Respondents.

Smt. Poonam, Mital, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th JANUARY, 2024.

ORAL JUDGMENT. :

1. The issue involved in this appeal is at the time of accident the offending vehicle was not insured with the Appellant/Insurance Company.

2. It is contention of the learned Counsel for the Appellant that at the time of accident the offending vehicle was not insured with the Appellant/Insurance Company and insurance policy was issued on 06/06/2002 and date of accident was 05/06/2002, but, this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned Counsel for Respondents/Claimants that to prove the defense of the Insurance Company the Tribunal has examined Mr. Narendra Patil, Officer of Appellant/Insurance Company. In cross examination, he has admitted that the Appellant/Insurance Company was liable to pay the compensation to the passenger traveling in the Bus. Learned Counsel further submitted that in written statement, the Appellant/Insurance Company has stated that Insurance Policy is

valid from 03/06/2002 to 02/06/2003. It covers the date of accident i.e. 05/06/2002. Learned Counsel further submitted that while calculating compensation, the Tribunal has applied multiplier of 13 as age of deceased was 43, but proper multiplier is 14. The learned Counsel further submitted that the Tribunal has awarded consortium on lower side, it be awarded.

4. I have heard both learned Counsel, perused the judgment and order passed by the Motor Accidents Claim Tribunal, Raigad-Alibaug, (for short “the Tribunal”).

5. It is contention of learned Counsel for the Appellant that, at the time of accident, the offending vehicle was not insured and no Insurance Policy was issued to the offending vehicle. Learned counsel further submitted that at the time of accident passengers were in excess of the limit and, due to this, terms and conditions of the policy have been violated. Therefore the Insurance Company is not liable to pay the compensation. To prove its defense, the Insurance Company has examined Mr. Narendra Patil Asst. Manager at Exhibit-44. He has stated that at the time of accident, total 66 passengers were traveling in the Bus, 19 passengers died and 36 passengers sustained serious injuries in the accident. The accident

occurred as passengers excess than licensed capacity were being carried in the Bus. The driver of the bus was responsible for the accident. In cross-examination, this witness admitted that, if the accident had taken place while 49 passengers were being carried in the Bus, as per the Insurance Policy, the Insurance Company is liable to pay compensation to them. It is admitted by the Insurance Company that the Insurance Policy was covered for 49 persons, in the said accident 19 passengers died.

6. It is contention of learned Counsel for Respondents/Claimants that Insurance Company has settled the claim with all other passengers except the present Claimants. In my view, if Insurance Company has settled the claim with all other passengers except the present Claimants, they should have settled with the Claimants. The deceased comes within 49 passengers, as 19 passenger died and the deceased was one of them.

7. At the time of accident, deceased was 43 years old. As per the view of Hon'ble Apex Court in the case of ***Sarla Verma & Ors. vs. Delhi Transport Corp. & Anr. AIR 2009 SC 3104,*** proper multiplier is 14, the Tribunal has applied 13, which is not proper. Hence, I am considering the multiplier of 14.

7.1. 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 and Rs. 18,000/- for loss of estate and Rs. 18,000/- for funeral expenses. There are three Claimants.

Considering the above calculations, the Claimants are entitled for following compensation

Monthly Income	Rs. 15,941.74/-
Less income Tax	Rs. 855/-
Total Monthly income	Rs. 15,086.74/-
Personal expenses 1/3rd	Rs. 5028.91/-
Dependency 2/3rd	Rs. 10,057.83/-
Annual Income Rs. 10,057.83 x 12	Rs. 1,20,693.96/-
Rs.1,20,693.96 x 14 Multiplier	Rs. 16,89,715.44/-
Consortium amount 48000x3 (Claimants)	Rs. 1,44,000/-
Funeral expenses	Rs. 18,000/-
Loss of Estate	Rs. 18,000/-
Total Compensation	Rs. 18,69,715/-
Less amount awarded by the Tribunal	Rs. 14,26,000/-
Enhanced amount	Rs. 4,43,715/-

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

ORDER

a) Appeal is dismissed.

b) The Claimants are entitled for enhanced amount Rs. 4,43,715/- @ 7.5 interest per annum from the date of filing Claim Petition till realisation of the amount. Out of this amount Rs. 1,80,000/- is consortium amount, the Claimants are entitled @ 7.5% p.a. on this amount from 1st November, 2017 till realisation of amount.

c) The Appellant/Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks after receipt of the Order.

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

9. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)