IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 863 OF 2016

Iffco Tokio General Insurance Co. Ltd. Situated at 3, New Savita Palance, Next to TVS Sajawat Showroom, Ambadi Road, Vasai (W), Tal. Vasai, Dist. Thane. Present Address : AFL House, 2nd Floor, Lokbharti Complex, Marol Maroshi Road, Andheri (E), Mumbai – 400059	… Appellant (Orig. Opponent No.2)

Versus

1 Smt. Shayista Munaf Jigaru Aged about 36 years (Wife of deceased) 2 Master Mohammad Munaf Jigaru A minor, age 14 years (Elder Son of deceased) Through mother and next friend Applicant no.1 3 Master Wasif Munaf Jigaru A minor, age 10 Years, (Younger Son of deceased) Through mother and next friend Applicant No.1) All R/at Hathi Mohallah, Fatima Jigaru Apartment Vasai, Tal. Vasai, Dist. Thane 4 Shri Mohammad Ismail Adambhai Shaikh, Adult, R/O. Milan Apartment, Diwanman, Vasai (W), Tal. Vasai, Dist : Thane	… Respondents (Respondent No.1 to 3 are Orig. Applicant & the Resp. 4 is Orig. Opponent No.1)

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Ms. Jyoti Bajpayee, Advocate for the Appellant.
Mr. Vilas R. More, Advocate for Respondents.

CORAM : SHIVKUMAR DIGE, J.
DATE : 4th APRIL, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is pay and recovery order passed by the Tribunal and consortium amount is awarded on higher side.

2. It is contention of learned counsel for the appellant/Insurance Company that at the time of accident driver of offending vehicle was not holding effective and valid driving licence, the Tribunal should have exonerated the insurance company from paying the compensation as there was breach of terms and conditions of insurance policy but the Tribunal has passed pay and recovery order which is erroneous. Learned counsel further submitted that at the time of accident the deceased was 45 year old. The Tribunal should have awarded 25% towards future prospects but the Tribunal has awarded 30% future prospects which is on higher side hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 to 3/claimants that while passing the Judgment and Order, the Tribunal has considered all the aspects, hence no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Vasai (for short "**the Tribunal**"). In respect of the issue of driving licence of the driver of offending vehicle the Tribunal has observed that at the time of accident the driver was not holding effective and valid driving licence. There was breach of terms and conditions of insurance policy hence Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, it is settled principle of law that if there is breach of terms and conditions of insurance policy, the insurance company is liable to pay compensation to the claimant and recover it from the owner of the offending vehicle. The Tribunal has awarded Rs.1,00,000/- for loss of care and guidance of minor, Rs.1,00,0000/- for consortium and Rs.25,000/- for funeral expenses, it is on higher side.

As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, reported in 2018 ACJ 2782 (SC)***, each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

The Tribunal has awarded 30% future prospects. At the time of accident deceased was self employee and he was 45 year old. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, reported in 2017 ACJ 2700(SC),*** the claimants are entitled for 25% future prospects.

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

Particulars	**Rs.**	**Entitlement**
Monthly Income	Rs.	4,200.00
Loss of Income (Rs.4200 X 12 X14)	Rs.	7,05,600.00
Future prospects (25%)	Rs.	1,76,400.00
Loss of consortium	**Rs.**	1,44,000.00
Loss of Estate and Guidance of Minor	Rs.	18,000.00

Funeral Expenses	Rs.	18,000.00
Total	Rs.	**10,62,000.00**
Less compensation awarded by the Tribunal	Rs.	11,42,000.00
Refund of Rs.	Rs.	**80,000.00**

The Insurance Company is entitled for refund of Rs.80,000/-.

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

ORDER

(i) The appeal is partly allowed.

(ii) The Appellant/ Insurance Company is permitted to withdraw Rs.80,000/- along with proportionate interest out of deposited amount.

(iii) The claimants are permitted to withdraw balance amount along with proportionate interest.

(iv) The statutory amount along with interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

(v) The Appellant/Insurance company is at liberty to recover the compensation amount as directed by the Tribunal from the owner of the offending vehicle.

(vi) Pending applications, if any disposed of.

(SHIVKUMAR DIGE, J.)