IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 418 OF 2009

M/s. Bajaj Allianz)
General Insurance Co. Ltd.)
A/P. G. E. Plaza,)
Airport Road,)
Yeravada,)
Pune – 411 006) ….Appellant
(Org. O. P. No.2/Insurer)

Versus

1. Mohan Bapuso Kshirsagar,)
Age: 52 years, Occ: Labourer,)
R/at. Flat No.45, Bijli Chowk,)
Jawahar Nagar, Kolhapur.)

2. Rajesh Mohan Kshirsagar,)
Age: 22 years, Occ: Labourer,)
R/at. Flat No.45, Bijli Chowk,)
Jawahar Nagar, Kolhapur) ….(Org. Applicants)

3. Mr. Amol Bajirao Nikam,)
Age: 45 years, Occ: Business,)
R/At-99, Vyankatpura Peth,)
Near Garecha Art Ganpati)

Satara-415002.) ....Respondents
(Org. Applicants &
Org. Opp. No.1)

Mr. Devendranath S. Joshi, Advocate for the Appellant.
Mr. Jayant Bardeskar, Advocate for the Respondent Nos.1 & 2.
Mr. Kalpesh Patil i/b Mr. C. J. Gaikwad, Advocate for the Respondent No.3

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th APRIL, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the Appellant/Insurance Company that at the time of accident, the driver of offending vehicle was not holding effective and valid driving licence. The owner of the vehicle appeared before the Tribunal but he has not produced driving licence on record but the Tribunal has not considered this fact and has fixed liability on the insurance company, which is erroneous. Hence, requested to allow the Appeal. He relied on ***Pappuu And Others vs. Vinod Kumar Lamba And Another 2018***

(3) SCC 208.

3. It is contention of learned counsel for the Respondent No.3 owner of the offending vehicle that at the time of accident, the driver of offending vehicle was holding effective and valid driving licence. The driving licence was produced on record. The Tribunal has observed it, in his order about it. Learned counsel further submitted to prove that driver was not holding effective and valid driving licence, the Appellant has not examined person from R.T.O. Office. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it.

4. Learned counsel for the Respondents/Claimants submits that appropriate order be passed.

5. I have heard all learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short "the Tribunal").

6. While dealing with the issue of driving licence, the Tribunal has observed that after arguments, the driving licence of the driver of offending vehicle was produced on record. The Tribunal has further observed that no evidence is produced on record by the Appellant/Insurance Company to prove that at the time of accident

driver was not holding licence. On that ground, the Tribunal has fixed liability on the insurance company. I do not find infirmity in it. In my view, The driving licence of the driver of offending vehicle was produced on record. The Tribunal has observed about it. The Appellant/Insurance Company has examined their officer to prove that driver was not holding effective and valid driving licence but in cross-examination he admitted that he has not taken search in R.T.O. Office about the driving licence of the offending vehicle. In my view, it was onus on the Appellant to prove their defense by producing cogent evidence. Hence, I do not see merit in the contention that driver of offending vehicle was not holding effective and valid driving licence at the time of accident. The Tribunal has awarded consortium amount on lower side. As per 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/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are two Claimants. The total of it comes to Rs.1,32,000/- and the Tribunal has awarded Rs.8000/-, if this amount is deducted from the amount awarded by this Court, it comes to Rs.1,24,000/-, the Claimants are entitled for this amount.

7. In view of above, Appeal is devoid of merit and, I pass following order.

ORDER

i. Appeal is dismissed.

ii. The Claimants are entitled for enhanced amount of Rs.1,24,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.

iii. The Appellant/Insurance Company shall deposit the amount along with accrued interest thereon, within 6 weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon,.

v. The Claimants shall pay the deficit Court fees on enhanced amount, if any, as per Rule.

8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)