IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 579 OF 2023

The New India Assurance Co. Ltd. Having office at A/p Mata Building Sangli Civil Hospital, Sangli	…	Appellant (Orig. Respondent No.3)

Versus

1 Sunita Satish Kadam
Age : 20 yrs, Occu. Household

2 Sarthak Satish Kadam
Age : 1.5 yrs, Occu. Nil

3 Mahadeo Vitthal Kadam
Age : 65 yrs, Occu. Agri.

4 Sonabai Mahadeo Kadam
Age 60 yrs. Occu. Nil
All residing at Mangale, Tal. Shirala,
District : Sangli

5 Mr. Deelip Kisan Bhosale
Age : 40 yrs, Occ. Trade
R/o. Mohare, Tal. Panhala, Dist. Kolhapur

6 Dilip Mahipati Paymal
Age : 30 yrs, Occu. Driver
R/o. Mohare, Tal. Panhala, Dist. Kolhapur

7 Sachin Jaysing Patil R/o. Rajaramnagar Islampur Tal. Walwa, Dist. Sangli	…	Respondents (No.1 & 4 Orig. Applicants & No.5 to 7 Orig. Respondent No.1, 2 & 4)

WITH
FIRST APPEAL STAMP NO. 14176 OF 2015

1 Deelip Kisan Bhosale
Aged 45 years, Occ. Trade,
Resident of Mohare, Tal. Panhala
District Kolhapur.

2. Mr. Dilip Mahipati Paymal
Aged 35 years, Occ. Driver,

Resident of Mohare, Tal. Panhala
District Kolhapur …Appellants

Versus

1 Sunita Satish Kadam
2 Sarthak Satish Kadam
3 Mahadeo Vithal Kadam
4 Sonabai Mahadeo Kadam
All Residents of Mangale, Tal. Shirala,
District Sangli
5 The New India Assurance Co. Ltd.
Having address at At & Post Mata Building,
Near Sangli Civil Hospital, Sangli, District Sangli.
6 Sachin Jaysing Patil
R/o. Rajaramnagar, Islampur, Taluka Walwa,
District - Sangli …Respondents

WITH
FIRST APPEAL NO. 1243 OF 2019

The New India Assurance Co. Ltd.
Nationalised Insurance Company
Having office at A/p Mata Building
Sangli Civil Hospital, South Sivaji Nagar, Sangli …Appellant (Orig. Respondent No.2)

Versus

1 Dilip Mahipati Paymal
Aged 32 Yrs, Occ. Driver,
R/a Mohare, Tal. Panhala, District Kolhapur
2 Dilip Kisan Bhosale
Aged 47 yrs, Occ. Owner.
R/a Mohare, Tal. Panhala, District Kolhapur
3 Baban Shamrao Chougule
Age 55 Yrs, Occ. Agricultural
R/A Mangale, Tal. Shirala, Dist. Sangli
4 Vimal Baban Chougule
Age 2 Yrs, Occ. Household
R/A. Mangale, Tal. Shirala, Dist. Sangli …Respondents

WITH
FIRST APPEAL STAMP NO. 14179 OF 2015

1 Dilip Kisan Bhosale
Aged 45 yrs, Occ. Trade,
Resident of Mohare, Tal. Panhala,
District Kolhapur

2 Dilip Mahipati Paymal
Age : 35 years, Occu. Driver,
Resident of Mohare, Tal. Panhala, Dist. Kolhapur

Versus

1 Baban Shyamrao Chougule

2 Vimal Baban Chougle
Both Residents of Mangale, Tal. Shirala,
District Sangli.

3 The New India Assurance Co. Ltd.
Having address at Divisional Office, Kamgar
Bhavan, M.G.Road, Sangli, District : Sangli …Respondents

Ms. Shalini Shankar, Advocate for the Appellant in FA/579/2023 and FA/1243/2019.
Mr. Ganesh Bhujbal, Advocate for the Appellant in FAST/14716/2015 and FAST/14179/2015 and for Respondent Nos.5 and 6 in FA/579/2023 and for Respondent Nos.1 and 2 in FA/1243/2019.
Mr. Parth Modak i/b. Mr. Bhushan Walimbe, Advocate for Respondent Nos.1 and 2 in FA/579/2023 and FAST/14716/2015.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd JANUARY, 2024.

<u>Oral Judgment :</u>

1. First Appeal No.1243 of 2019 and First Appeal Stamp Nos.14179 of 2015, are not on board. As connected matters are on board, the same are taken up for hearing together.

2. These four appeals are preferred against the judgment and order passed by Motor Accident Claims Tribunal, Islampur (for short “the Tribunal”). Out of these four appeals, two appeals are preferred by the owner and driver of the offending vehicle and two appeals are preferred by the Insurance Company. As these four appeals are in respect of the same accident, I am deciding it by this common judgment.

3. It is contention of learned counsel for appellant-Insurance Company that the Tribunal has fixed 40% negligence on the driver of offending vehicle, which is not proper. Learned counsel further submitted that the accident occurred due to sole negligence of the driver of the tractor but this fact is not considered by the Tribunal. Learned counsel further submitted that there was breach of terms and condition of the insurance policy as the driver of the offending vehicle was not holding valid and effective driving license at the time of accident. The Tribunal should have exonerated the Insurance Company but pay and recover order is passed, which is not proper. Hence, requested to allow the appeals filed by the Insurance Company.

4. It is contention of learned counsel for appellant-owner of the offending vehicle and driver that at the time of the accident, the driver was holding license but it was not renewed. It does not mean that the driver was not expert in driving the vehicle. The vehicle was insured with the Insurance Company but the Tribunal has not considered this fact and

has passed pay and recover order, which is not proper. Hence, requested to allow the appeals filed by the driver and owner of the offending vehicle.

5. It is contention of learned counsel for respondents/claimants that in First Appeal No.579 of 2023, the Tribunal has awarded consortium amount of Rs.1,00,000/- only. There are four claimants. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)***, the claimants are entitled for total amount of Rs.1,76,000/-. The remaining amount, be awarded.

6. I have heard all learned counsel, perused the judgments and orders passed by the Tribunal.

7. It is claimants' case that on 2nd April 2011 at about 11.00 pm, the deceased – Sharad was riding on the motorcycle, he dashed against the rear portion of the tractor bearing No.MH-09-D-5945 hauled with two trolleys bearing No. MH-09-K-7168 and No.MH-09-AL-3243. The motorcycle rider died in the accident. An offence was registered against Sharad Chougale.

It is contention of learned counsel for Insurance Company that at the time of accident, the driver of the tractor was not holding valid and effective driving licenses, so there was breach of terms and condition of Insurance Policy. The Tribunal should have exonerated the Insurance Company from paying compensation.

It is contention of learned counsel for driver and owner of the tractor that the driver was holding license but it was not renewed, it does not mean that the driver was not a skilled driver.

In my view, at the time of the accident, the driver was holding license but it was not renewed. There was breach of terms and condition of insurance policy. It is settled principle of law that if the driver of the offending vehicle was not holding effective and valid driving license, the Insurance Company has to pay compensation first and recover it from the owner of the offending vehicle. The same order is passed by the Tribunal. I do not find infirmity in it.

The Tribunal in First Appeal No.579 of 2023 has awarded consortium amount of Rs.1,00,000/-. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd(Supra)***, each claimant is entitled for Rs.44,000/- as consortium amount. There are four claimants, the total comes to Rs.1,76,000/-. If the amount of Rs.1,00,000/- granted by the Tribunal is deducted from Rs.1,76,000/-, it comes to Rs.76,000/-. The claimants are entitled for this amount.

8. In view of above, I pass following order :

O R D E R

1. All Appeals are dismissed. No order as to cost.
2. The claimants are entitled for enhanced amount of Rs.76,000/- towards consortium amount @ 7.5% per annum from 1st November 2017 till realisation of the amount.

3. The appellant-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks from the receipt of this order. The appellant-Insurance Company is at liberty to recover the deposited amount from owner of the vehicle as directed by the Tribunal.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount in First Appeal No.1243 of 2019 and First Appeal No.579 of 2023 be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)