IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.751 OF 2004

	National Insurance Company Ltd., Pimperi through their Mumbai Regional Office having their office at 12, J. Tata Road, Mumbai 400 020.		...Petitioners/ Appellant
	Versus		
1	Homai Rusi Cooper of Bombay Parsi Indian Inhabitant, Aged 42 years.		
2	Tehmina Dhunjishaw Cooper, of Bombay Parsi Indian Inhabitant, Aged 62 years		
3	Khushroo Rusi Cooper, of Bombay Parsi Indian Inhabitant, Aged 18 years		
4	Monaz Rusi Cooper, of Bombay, Parsi Indian Inhabitant, Aged 12 years.		
5	Dilshad Rusi Cooper, of Bombay Parsi Indian Inhabitant, Aged 9 years, Residing at Mirza Bldg, N. Petit Street, Grant Road, Bombay 400 007.		...Respondents (Orig. Applicants)
6	Suresh Pandurang Gaikwad, of Lonavala Hindu Indian Inhabitant, Aged 28 years, Residing at Lonavala and employed by M/s. Bharat Saw Mills, Lonavala,		
7	Kantitlal Meghraj Chauhan – Deleted		
8	M/s. Bharat Saw Mills, Lonavala, Tal. Maval, Dist. Pune. Notice on – Kantilal Megraj Chauhan, Owner of M/s Bharat Saw Mills, At Post Lonavala, Tal. Vadgaon Maval, District. Pune		...Respondents (Orig. Opp. Party)

Ms. Shalini Shankar, Advocate for the Appellant.
Mr. Avinash Joshi i/b. Mulla and Mulla and C.B. and C, Advocate for Respondent Nos.1 to 6.

SHUBHADA SHANKAR KADAM
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Date: 2024.02.05 10:30:58 +0530

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd JANUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is liability of payment of Insurance Company was Rs.1,50,000/-.

2. It is contention of learned counsel for the appellant-Insurance Company that as per the terms and condition of the Insurance Policy, the liability of payment of Insurance Company was Rs.1,50,000/- but the Tribunal has not considered this fact and has passed Pay and Recover order, which is not proper. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the claimants that while passing the award, the Tribunal has considered all the aspects and on that basis, judgment and order is passed, which is proper. No interference is required in it.

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

5. While dealing with the issue of liability to pay the compensation by the Insurance Company of Rs.1,50,000/-, the Tribunal has observed that liability of the Insurer cannot travel beyond the statutory liability of Rs.1,50,000/- in respect of covering risk of third party i.e. deceased but while passing order by relying on the judgment of ***Oriental Insurance***

Company Ltd. versus Cheruvakkara Nafeesa and ors. reported in 2001 ACJ 1, the Tribunal has observed that the Insurance Company is liable to pay the claimant entire amount with a right to recover from the insured i.e. owner of the vehicle. I do not find infirmity in it as the Tribunal has passed order of pay and recover, of the amoun in excess of Rs.1,50,000/-. The ratio laid down in case of ***Oriental Insurance Company Ltd.(supra)*** is squarely applicable to the present case.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3 The statutory amount be transferred 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.)