IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 262 OF 2022

H. D. F. C. General Insurance Company Ltd.,)
Through:- The Divisional Officer)
Address: 6th Floor, Leela Business Park,)
Andheri Kurla Road, Andheri (East) Mumbai-59) ….Appellant

Versus

1. Shri. Kalidas Ramchandra Ghode,)
Age: 24 years, Occ:- Business,)
R/o. Sangmeshwar Nagar,)
Chehedi Pumping, Chehedi,)
Nashik Road, Nashik – 422101.)

2. Shri. Rajesh Madhukar Tajanpure,)
Age: Major, Occ: Vehicle Owner,)
Address: 297, Darna Hotel Area,)
Chehedi Budruk, Nashik – 422101.)

3. Renu Jagdish Anand,)
Age: Major, Occ: Household,)
R/o. Shakti Villa, Laxmi Nagar,)
Tidke Colony, Nashik – 422101.) ….Respondents

Mr. Abhijit Kulkarni a/w Mr. Gourav Shahane and Mr. Krishna Jaybhay, Advocate for the Appellant.
None present for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JANUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is pay and recover order passed by the Tribunal.

2. It is contention of learned counsel for the Appellant that there was breach of terms and condition of insurance policy as, the Claimant was gratuitous passenger in the offending car hence, the Insurance Company is not liable to pay compensation and the tribunal should have exonerated the Insurance Company from paying compensation but, Tribunal has passed pay and recover order, which is not proper. Hence, requested to allow the appeal.

3. Though Respondents are served, none present for the Respondents. Appeal is of year 2022 hence, I am deciding it on merit.

4. I have heard learned counsel for the Appellant. Perused judgment and order passed by Motor Accident Claims Tribunal, Nashik (for short “the Tribunal”).

5. It is contention of learned counsel for the Appellant that the Claimant was gratuitous passenger in the offending car. While dealing with this issue, the tribunal has observed that, no evidence was produced on record to prove that there was breach of terms and

condition of insurance policy. Considering evidence on record, the Tribunal has passed the pay and recover order, which is proper. I do not find infirmity in it.

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

ORDER

i. Appeal is dismissed.

ii. The Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The Appellant is at liberty to recover compensation amount with interest from Respondent No.2.

iv. 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. All pending applications stand disposed of.

(SHIVKUMAR DIGE, J.)