IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 650 OF 2023

	The National Insurance Company Limited RO II Sterling Building, 5th Floor Murzbaan Street, Fort, Mumbai – 400 001.	…	Appellant
	versus		
1	Jayshree Navnath Kamble, Age 21 years, Occ : Household.		
2	Shravan Navnath Kamble, Age : 2 years, Occ : Nil/		
3 3(A) 3(B) 3(C) 3(D)	Sakhubai Maruti Kamble, Age : 52 years, Occ.: Household, Appellant No.2 minor through guardian Applicant No.1 – Jayashree Navnath Kamble (mother). R/o. Waghmala, Post Dhavadi, Tal.Wai District-Satara. Mr. Gorakhnath Maruti Kamble, Age 28 years, son of deceased Occ. Driving R/at Waghmal, Post Dhawadi, Tal Wai, Dist. Satara. Surekha Pandurang Gaware, Age 44 years daughter of deceased occu. Agriculture R/o. Kanbatwadi, Renusevasti, Post Dhawadi, Tal Wadi, Dist. Satara. Chaya Ramchandra Ingulkar, Age 40 years, daughter of deceased, Occ. Household, R/o. Songirwadi, Renusevasti, Post Dhawadi, Tal Wadi, Dist. Satara. Maya Suresh Zhade, Age 35 years, daughter of deceased, Occ. Agriculturist, R/o. Kanbatwadi, Renusevasti, Post Dhawadi, Tal.Wadi, Dist. Satara.		

3(E)	Rekha Sopan Gaikwad, Age 30 years, Daughter of deceased R/o. Gopuji, Taluka, Khatav, Dist. Satara (Amendment carried out as per order dated 5th April 2024.)		
4	Mayur Rajkumar Lokhande, Age 21 years, Occ: Vehicle Driver, R/o. Sakharwadi, Tal. Phaltan, District: Satara.		
5	Kisan Baburav Jadhav, Age 45 years, Occ: Omni Owner, R/o. Devlimura, Post Janjwaad, Tal. Mahabaleshwar, Dist. Satara.	….	Respondents

Ms. Poonam Mital, Advocate for the Appellant.
Mr. Vaibhav R. Gaikwad along with Mr. Atharva R. Bhingardive, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. The issues involved in this appeal are, at the time of the accident, the driver of the offending vehicle was not holding valid and effective driving license and consortium amount is awarded on higher side.

2. It is contention of learned counsel for the appellant-Insurance Company that the driver of the offending vehicle was not holding effective and valid driving license, there was breach of terms and condition of the insurance policy. To prove their defense, the Insurance Company has examined Officer from the RTO office, but, these facts are not considered

by the Tribunal. Learned counsel further submitted that the Tribunal has awarded consortium amount on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that the witness who has been examined by the appellant – Insurance Company had not been provided with the license number of the driver of the offending vehicle. Moreover, he was not aware about issuance of license prior to the year 2014. Learned counsel further submitted that the Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

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

5. To prove its defense, the appellant-Insurance Company has examined DW3-Sudharshan Gavali, Clerk of RTO Officer, Satara, at Exhibit-46. He has stated that since 2007, issuance of license through computer system has been started and he has examined about the license of Mayur Lokhande, it is not traceable in their office record. In cross-examination, he has admitted that camps are being taken in each Taluka of Satara District for issuance of licenses. Prior to 2014, in Phaltan Taluka, licenses were issued on manual basis and if number of that license is given, search can be taken in their office. He further admitted that the appellant-Insurance Company did not provide license of the

driver of the offending vehicle to him and he is not aware if the driver of the offending vehicle had taken license on manual basis. While dealing with the issue of issuance of license, the Tribunal has observed that since manual issuance number of the driver's license of the offending vehicle was not provided to the clerk of the RTO Office, who has been examined as witness by the appellant – Insurance Company, he could not take search of it. Moreover, mere filing of charge-sheet for not having driving license, cannot be a ground to show that the driver of the offending vehicle was not holding effective and valid driving license. On that ground, the Tribunal has held that the Insurance Company is liable to pay compensation. I do not find infirmity in it. In my view, the witness who was examined by the appellant-Insurance Company from the RTO Office has stated that manual license number of the driver of the offending vehicle was not provided to him, hence, he could not trace it. It is settled principle of law that if defense is taken by the appellant-Insurance Company, it has to be proved by producing cogent evidence but it has not been done in this case. Hence, I do not see merit in the contention that the driver of the offending vehicle was not holding effective and valid driving license at the time of the accident.

5.1. While awarding compensation, the Tribunal has awarded Rs.2,50,000/- as consortium amount, which is on higher side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for

Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are three claimants, the total comes to Rs.1,80,000/-, if this amount is deducted from Rs.2,50,000/- considered by the Tribunal, it comes to Rs.70,000/-, which is an excess amount. The appellant-Insurance Company is entitled to it.

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

O R D E R

1. The appeal is allowed.
2. The appellant/Insurance Company is permitted to withdraw an amount of Rs.70,000/- along with proportionate interest thereon out of the deposited amount.
3. Respondent Nos.1 to 3/claimants are permitted to withdraw the balance amount along with proportionate interest thereon.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

   The first appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)