IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 224 OF 2023

	Shubha R. Nair Adult, Aged about 73 years, R/o. DU 7, Golden Vally No.4A, Kalina Church Road, Sundar Nagar, Kalina Market, Sacristan, Mumbai 400 029	))))))	….Appellant (Org. Resp. No.1)
	Versus		
1	IFFCO Tokiyo General Insurance Co. Ltd. 103, Center Point, Andheri Kurla Road Andheri (E), Mumbai 400 093	)))	..Orig. Respondent No.2
2	Nitin Mawjibhai Jaweri Age: 56 years, Occu: Business	))	
3	Preyansh Nitin Jaweri Age: 27 years, Occupation: Education Both R/o. C 63/102, 1st Floor, Shivchandan Co-op. Society, Sector 9, Shantinagar, Meera Road (East).	)))))	Respondent Nos. 2 &3 Orig. Claimants) ….Respondents

WITH

FIRST APPEAL NO. 227 OF 2023

	Shubha R. Nair Adult, Aged about 73 years, R/o. DU 7, Golden Vally No.4A, Kalina Church Road, Sundar Nagar, Kalina Market, Sacristan, Mumbai 400 029	))))))	….Appellant (Org. Resp. No.1)
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SHUBHADA SHANKAR KADAM
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1	IFFCO Tokiyo General Insurance Co. Ltd. 103, Center Point, Andheri Kurla Road Andheri (E), Mumbai 400 093	)))	...Respondent

Mr. Rajesh Bhaskar Parab, Advocate for the Appellant in both Appeals.
Mr. Rajesh Kanojia a/w Ms. Deepika Prabhula, Advocate for the Respondent-Insurance Company in both Appeals.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

1. These appeals are preferred by the owner of the offending vehicle against two separate judgments and orders passed by Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”). Since both the appeals arise out of the same accident, I am deciding it by this common judgment.

2. Brief facts of the case are as under :

On 3rd April 2014 at about 1.30 am, deceased Abhaya was proceeding by Maruti Alto car No. MH-02-CW-3950 from Sion-Panvel Highway. The car driver – Neel Nair was driving the car rashly and negligently and without considering the situation on the road. The said car driver while overtaking tempo No. MH-04-EB-9489 from left side, on Hiranandani bridge, dashed into road divider and went on Bombay Pune road and gave dash to unknown truck. Due to the said dash, the driver and wife and daughter of the claimant No.1 died on spot in the accident.

3. It is contention of learned counsel for the appellant that at the time of the accident, the offending vehicle was insured with respondent No.1-Insurance Company. In cross-examination, claimant No.1 has stated that the said car was taken on rent basis and he was not aware how much rent was fixed. On that statement, the Tribunal has held that it was breach of terms and conditions of Insurance policy and has passed the order directing the appellant to pay compensation amount and has exonerated the Insurance Company, which is not proper. Learned counsel further submitted that in examination-in-chief, the claimant No.1 has specifically stated that the car was belonging to the friend of his deceased wife, who was travelling in the said car. He has not stated about the rent of the said car but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

4. It is contention of learned counsel for respondent – Insurance Company that in cross examination, claimant No.1 has specifically stated that the offending car was taken on rent basis, it shows that there was breach of terms and conditions of the insurance policy. The order passed by the Tribunal is legal and valid and no interference is required in it.

5. I have heard both learned counsel, perused the judgments and orders passed by the Tribunal.

6. To prove their case, the claimants have examined claimant No.1-Nitin Jaweri at Exhibit-20. In examination-in-chief, he has stated that

on the day of the accident, his wife along with daughter were going in offending Alto Car of her friend. In cross-examination, he has stated that he does not know the car driver and the said car was taken on rent and he was not aware about the rent. To prove the breach of terms and conditions, the respondent No.1-Insurance Company has examined their officer – Ravindra Jadhav. He has stated that as claimant No.1 has admitted in cross-examination that the car was taken on rent, there was breach of terms and condition of the Insurance policy. In cross-examination, this witness has admitted that investigator was appointed to check whether the offending car was taken on rent or not and in the said investigation report, it is not mentioned that the said car was taken on rent. In my view, the Insurance Company had appointed Investigator to verify if car was taken on rent by the deceased. As per admission given by defense witness in cross-examination, in the said report, it is mentioned that the car was not taken on rent. It shows that it was not proved before the Tribunal that there was breach of terms and conditions of the insurance policy and the offending car was taken on rent by the deceased but the Tribunal has not considered the evidence produced on record and without verifying the evidence, mechanically has held that there was breach of terms and condition of insurance policy, which is not proper. Hence, I am setting aside the observations of the Tribunal in respect of payment of compensation by the appellant. As the offending car was insured with respondent-Insurance Company, the respondent

Insurance Company is liable to pay the compensation.

It is the contention of learned counsel for respondent – Insurance Company that Insurance Company has paid the compensation amount along with interest to the claimants as directed by the Tribunal.

7. In view of above, I pass the following order :

1. Both the Appeals are allowed. The Appellant in both appeals is not liable to pay compensation to the claimants.
2. Insurance Company is liable to pay the compensation to the claimants.
3. The Appellant in both appeals is at liberty to withdraw the statutory amount along with accrued interest thereon from this Hon'ble High Court.

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

(SHIVKUMAR DIGE, J.)

Note : This order is corrected in view of order dated 9th February 2024.