

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

FIRST APPEAL NO.905 OF 2019

NILAM
SANTOSH
KAMBLE

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Date: 2024.05.10
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1. The Oriental Insurance Co. Ltd.	}	
Regional Office, Mayfair Towers, Mumbai	}	
Pune Road, Wakadewadi, Pune-411 003.	}	
Through Mumbai Regional Office-2, SBI	}	(Org.
Building Annexe, 3 rd Floor, Bank Street,	}	Opponent
Fort, Mumbai-400 023.	}	No.2)
	}	...Appellant

Versus

1. Malan Rambhaji Shinde	}	(R/No.1
Age-49 years, Occ: Housewife	}	Original
R/at Village Mandki, Taluka-Purandar,	}	Applicant)
District-Pune.	}	
 2. Rajendra Kundlik Deshmukh	}	(R/No.2-Org.
Age-Adult, Occ: Business	}	Opponent
R/at Village Shindewadi, Taluka-Malshiras,	}	No.1)
District-Solapur.	}	...Respondents

Mr.Sandeep Sharad Jinsiwale, for the Appellant.
Mr.Yogesh Pande, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are at the time of

accident driver of the offending vehicle was not holding effective and valid driving license and the offending vehicle was not involved in the accident.

2. It is contention of the learned counsel for the Appellant that, in the FIR the number of one vehicle is shown, whereas spot panchnamma the number of other vehicle is shown, which shows that the offending vehicle was not involved in the accident. The learned counsel further submitted that driver of the offending vehicle was holding driving license of non transport vehicle, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, no evidence is produced on record to show that there was false involvement of the offending vehicle. The learned counsel further submitted that no evidence is produced on record to show that driver was holding driving license of non-transport vehicle. The learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded.

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

5. While dealing with the issue of non-involvement of the vehicle, the Tribunal has observed that in FIR, number of offending vehicle is mentioned and in spot panchnamma there is description of Mahindra Trolleys. The Tribunal further observed that tractors registration number and particulars are mentioned in the Insurance Policy, name of the tractor and Mahindra Trolleys mentioned in the police papers and Insurance Policy. The Engine and Chasis number tallies with the police papers and Insurance Policy. The Tribunal has further observed that owner of the tractor or driver has not appeared before the Tribunal and did not enter into witness box to show that offending vehicle was not involved in the accident. On that basis, the Tribunal has passed order, I do not find infirmity in it.

6. In my view, the Tribunal has passed well reasoned order showing the involvement of the offending vehicle. Moreover, the Appellant-Insurance Company has not adduced

any evidence by examining witnesses to prove their defense. They should have examined Investigating Officer to prove their defence. Hence, I do not see merit in the contention that there is non-involvement of the offending vehicle in the said accident.

7. It is contention of the learned counsel for the Appellant that the driver of the offending vehicle was holding driving license of non transport vehicle where as he has driving LMV transport vehicle. In my view, this issue is no more res-intrigra. It is settled law that driver having non transport vehicle can be considered as eligible for driving LMV transport vehicle. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are two Claimant's. The total comes to Rs.1,32,000/-. The Tribunal has awarded Rs.30,000/-, if this amount deducts from it, the Claimant's are entitled for Rs.1,02,000/-.

1 2018 ACJ 2782 (SC)

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant is entitled for enhanced amount of Rs.1,02,000/- @ 7.5% interest per annum from 1st November 2017 till realization of the amount.
- (iii) The Appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks after receipt of this order.
- (iv) The Claimant is permitted to withdraw the deposited amount alongwith interest.
- (v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vi) The Appeal arising out of MACP No.536 of 2007 at Pune is disposed of.
- (vii) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.
- (viii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)