IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 683 OF 2015

United India Insurance Company)
Limited, Through Motor Third Party)
Claims Hub 5th Floor,)
Union Cooperative Insurance Building,)
Sir P. M. Road, Fort, Mumbai – 400 001.)….Appellant
(Orig. Insurer)

Versus

1. Vithal Ramakant Bhanushali)
Age: 44 years, Occu: Nil.)
(Father of the deceased))

2. Kunda Vithal Bhanushali)
Age: 43 years, Occ: Housewife,)
(Mother of the deceased))
Both are residing at Shelavali,)
Po. Kinavali, Taluka-Shahapur,)
District – Thane.)

3. M/s. Om Shree Ganesh Container)
Pvt. Ltd. At Gala No. 123, Truck)
Terminal Kalamboli, Tal-Panvel,)
District – Raigad.)
(Owner of Motor Trailer bearing)
No.l MH-06-AC-8488))….Respondent

(Res. Nos.1 & 2 Original Claimants &
Res. No.3 Original Opposite Party No.1)

WITH

FIRST APPEAL NO. 325 OF 2019

United India Insurance Company Limited)

Through Its Claims T. P. Hub (Mumbai)	)
5th Floor, Union Cooperative Insurance	)
Building Fort, Mumbai – 400 001.	) ….Appellant Orig. Oppo. No.2

Versus

1. Govind Pandurang Vaidya	)
Age- 49 years, Occu: Nil	)...Orig. Applicant No.1
2. Manjiri Govind Vaidya	)
Age: 46 years, Occ: Household	)….Orig. Applicant No.2
Both R/at: Prakalpa Vasahat Bhandara	)
Post, Shende, Taluka Akole	)
Dist: Ahmednagar	)
3. M/s Om Shree Ganesh Container Pvt. Ltd.	)
R/at Gala No.123, Truck Terminal	)
Kalamboli, Tal. Panvel. Dist: Raigad	)
(Owner of Motor Trailer	)
No. MH-06-/AC-8488)	)...Orig. Oppo. No.1
4. Bharat Vitthal Bhanushali	)
Legal Heirs:	)
1. Vitthal Ramakant Bhanushali	)
2. Kunda Vitthal Bhaushali	)
Room No.4, Sukh Shanti Chawl	)
Ganpati Pada, kalwa, Dist. Thane.	)
(Owner of Indica Car. No. MH-04/BB-8141)	)...Orig. Oppo. No.2
5. The Oriental Gen. Ins. Co. Ltd.	)
Marathi Grantha Sangrahalaya	)
Opp. Zilha Prishad Karyalaya, Thane	)
(Insurer of Indica Car. No. MH-04/BB-8141)	)...Orig. Oppo. No.4
	….Respondents.

Mr. Rahul Mehta i/bj KMC Legal Venture, Advocate for the Appellant in both Appeal.
Mr. Amit S. Chaudhary i/b Mr. Yogendra M. Pendse, Advocate for the Respondent Nos.1 & 2 in both Appeal.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH, 2024.

Oral Judgment. :

1. Both these appeals are preferred against the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal"). As both these appeals are against the same judgment and order out of the same accident hence, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Appellant/Insurance Company that the cheque which was given as a premium of insurance policy was dishonored. The said fact was proved before the Tribunal but, the Tribunal has passed pay and recovery order, which is erroneous. Learned counsel further submitted that the Tribunal has fixed 50% contributory negligence on driver of offending vehicle and 50% on the deceased, it is erroneous, as the accident occurred due to sole negligence of the deceased. Hence, requested to allow the

Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that, though witness was examined by the insurance company to prove that notices about the cancellation of policy were sent to owner of the vehicle and R.T.O. Office but no acknowledgment receipt of the said notices were produced on record. The Tribunal has considered all the aspects while passing the judgment and order and no interference is required in it.

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

5. While dealing with the issue of dishonor of cheque, the Tribunal has observed that the Appellant/Insurance Company has examined their officer to prove that notices were sent to the owner of the vehicle and R.T.O. Office about cancellation of policy but no acknowledgment of the said notices were produced on record. On that ground Tribunal has observed that Appellant/Insurance Company is failed to prove that the policy was cancelled and on that ground pay and recovery order is passed. I do not find infirmity in it. In respect of the issue of negligence the Tribunal has observed that offence was

registered against the driver of offending vehicle which was insured with the Appellant/Insurance Company. The driver of offending vehicle did not step into witness box to prove his defense. On that basis, the Tribunal has considered 50% negligence of driver of offending vehicle and 50% negligence of the deceased. I do not find infirmity in it.

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

ORDER

i. Both appeals are dismissed.

ii. The Claimants in both appeal are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

iv. The Appellant is at liberty to recover the compensation amount along with interest from owner of offending vehicle as fixed by the Tribunal.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)