IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 672 OF 2018

United India Insurance Company Limited
Pune Regional Office, Through Its Divisional
Office, 290, Samrat mansion, Vakharbhag, Sangli. ….Appellant (Org Opp. No. 2)

Versus

1. Smt. Minatai Vasant Patil
Age 60 years, Occ-Household, R/o Karnal, Tal-Miraj, Dist-Sangli. Respondent Nos. 1 to 4 (Org Claimants)

2. Mrs.Vaishali Pandit More
(before marriage:- Vaishali Vasant Patil)
Age-major, Occ-Household R/o :- Nagthane, Tal Palus Dist. Sangli.

3. Mrs. Varsha Vijarao Patil
(Before marriage :- Varsha Vasant Patil)
Age- Major, Occ-Household
r/o Nagthane, Tal Palus Dist. Sangli.

4. Mrs. Asavari Kiran Patil
(Before marriage:- Asavari Vasant Patil)
Age- Major, Occ-Household, R/o- Narghol Mala, Patil Vasti, Kavthe Mahankal, Tal. Kavathe Mahankal, Dist. Sangli.

5. Mr. Prasad Vasant Patil
Age- Major, Occ-Agriculture, R/o Karmal, Tal. Miraj, Dist Sangli.

6. Mr. Shabulal Shamshuddin Pathan
Age- Major Occ- Garage, r/o KGN. Garage, Karnal Road, Sangli.

… Respondents.

This Order is corrected as per Speaking to the Minutes of the Order dated 6th May, 2024.

Mr. Amol Gatne, Advocate for the Appellant.
Adv. Bhavika Shinde i/by Adv. Umesh Mankapure Advocate for the Respondent Nos. 1 to 5.
Mr. Kuldeep U. Nikam, Advocate for the Respondent No. 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th FEBRUARY, 2024.

ORAL JUDGMENT. :

1. The issue involved in this appeal is at the time of accident driver of offending vehicle was not holding effective and valid driving license.

2. It is contention of learned Counsel for the Appellant that at the time of accident the driver of offending vehicle was not holding effective and valid driving license, but this fact is not considered by the Tribunal. Learned Counsel further submitted that driving license which was produced on record by the owner of vehicle shows that it was renewed up to year 2010. The date of accident is 19.06.2011 on that date the said driving license was not renewed, it was renewed after the accident. There was breach of terms and conditions of Insurance Policy, but this fact is not considered by the Tribunal and has fixed liability on the Appellant/Insurance Company, which is erroneous. Hence, requested

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to allow the Appeal.

3. It is contention of learned Counsel for the Respondent No. 6/Owner of offending vehicle that the driver of offending vehicle was holding effective and valid driving license, but it was not renewed. It cannot be said that driver was not skilled driver and Appellant/Insurance Company has not laid any evidence to prove that the driver of offending vehicle was not holding effective and valid driving license. The Order passed by the Tribunal is legal and valid, no interference is required in it.

4. Learned Counsel for the Respondents/Claimants submits that consortium amount is awarded on lower side, it be awarded.

5. I have heard both learned Counsels, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Sangli, (for short "the Tribunal").

6. To prove that driver was holding effective and valid driving license at the time of accident, Respondent No. 6 owner of the vehicle produced driving license on record, it is at Exhibit-79. This document shows that driving license was renewed up to year 2010 and thereafter it was renewed in the year 2017-18. The date of accident is 19.06.2011, it shows that at the time of accident driver

was not holding effective and valid driving license, there is breach of terms and conditions of Insurance Policy, but this fact is not considered by the Tribunal. It is settled principal of law that, if, there is a breach of terms and conditions of Insurance Policy, the Insurance Company has to pay the compensation to the Claimants and recover it from the owner of the vehicle. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs. 48,000/- as consortium amount and Rs. 18,000/- for funeral expenses and Rs. 18,000/- for loss of estate. There are 5 Claimants and total of it comes to Rs. 2,76,000/-. The Tribunal has awarded Rs. 5,000/- for funeral expenses if this amount deducted the amount awarded by this Court it comes to Rs. 2,71,000/-. The Claimants are entitled for this amount.

7. In view of above, I pass following Order.

ORDER

a) The Appeal is allowed.

b) The Appellant/Insurance Company shall pay the compensation awarded by the Tribunal to the

Respondents/Claimants along with accrued interest thereon. The Appellant/Insurance Company is at liberty to recover the amount awarded by Tribunal with interest along with enhanced amount with interest from Respondent No. 6 Owner of the offending vehicle. The Appellant/Insurance Company shall deposit the enhanced amount of Rs. 2,71,000/- @ 7.5% interest per annum from 1st November, 2017 till realisation of amount.

c) The Claimants are permitted to withdraw this amount. The Appellant/Insurance Company is at liberty to recover the modified amount along with accrued interest from Respondent No. 6 owner of the vehicle.

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

8. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)

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