IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 74 OF 2011

	New India Assurance Co. Ltd. Star Trade Centre, 2nd Floor, Sodavala Lane, Borivali (W), Mumbai – 400 092	…	Appellant (Orig. Opponent No.2)
	versus		
1	Gajanan Dinkar Ghevada Age : 28 Years, Indian, Residing at Nirmal Chawl Committee, Ramchandra Chawl, Akurli Road, Kandivali (E), Mumbai- 400 101	…	Respondent No.1 is the original Applicant
2	Deepak Mahadik Age : Adult, Indian, Residing at 3/343, Sangam Chayya, Sector No.3, Charkop, Kandivali (W), Mumbai-400 067 Dismissed as per Registrar's order dt. 23.09.2014		Respondent No.2 is the original Opponent No.1. Respondents

Ms. Jyoti Pandey, Advocate for the Appellant.
Mr. S.R.Gupta, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th MARCH, 2024.

Oral Judgment :

1. The issue involved in this appeal is that the claimant is not entitled for compensation as he stepped into the shoes of the owner.

2. It is contention of learned counsel for the appellant – Insurance Company that the claimant had borrowed the motorcycle and was riding

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on the motorcycle when the accident occurred, he had stepped into shoes of owner of the motorcycle but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1/claimant that though the claimant had borrowed the motorcycle from the owner of the motorcycle which was insured with the appellant – Insurance Company, the Tribunal has observed that the claimant is entitled for claim under the personal accident policy (owner-cum-driver). Hence, requested to dismiss the appeal.

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

5. While dealing with the issue of payment of compensation, the Tribunal has observed that there is no dispute that the said motorcycle is insured with Insurance Company and it was package policy and there is no breach of terms and conditions of insurance policy. On that ground, the Tribunal has considered that since it is package policy, the claimant is entitled for compensation of Rs.60,000/-. I do not find infirmity in it.

5.1. As per the view of Hon’ble Apex Court in the case of ***Ramkhiladi and anr. versus United India Insurance Company Limited and anr. 2020 ACJ 627,*** the Apex Court has held that the deceased who had stepped into the shoes of the owner, at the most, may be entitled to a sum of Rs.1,00,000/- under personal accident policy. The Tribunal has awarded Rs.60,000/-, in my view, it is under personal accident policy.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)