

Reliance General Insurance Co. Ltd., }
Thr. Its Corporate Office, 4th Floor, }
Chintamani Avenue, Off Western Express }
Highway, Goregaon-East, Mumbai. }

...Appellant

1. Darshana Dashrath Pawar	}
Age-30 years, Occ: Household	}
2. Divyani Dashrath Pawar	}
Age-10 yers, Occ : Education	}
3. Srushti Dashrath Pawar	}
Age-04 years, Occ : Education	}
4. Sakharam Nathu Pawar	}
Age-55 years, Occupation : Nil	}
5. Sulochana Sakharam Pawar	}
Age-55 years, Occupation : Nil	}
6. Purva Dashrath Pawar	}
Age-02 years, Occupation : Nil,	}
All R/at : Dakhane, Post-Vighavali,	}
Taluka-Mangaon, District-Raigad,	}
Petitioner No.1 for herself and guardian	}
Mother of Petitioner Nos.2,3 and 6.	}
7. Vinayak Maruti Dange	}
Aged-40 years, Occ: Business	}
R/o Kharbachhi Wadi, Gangavani,	}
Taluka-Mangaon, District-Raigad.	}

....(Respondent
Nos.1 to 6
Claimants
Respondent
No.7-Original
Opp. No.1.)

....Respondents

Digitally signed
by NILAM
SANTOSH
KAMBLE
Date: 2024.01.23
11:05:09 +0530

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Mr.T.J. Mendon, for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th JANUARY 2024

ORAL JUDGMENT :

. The issue involved in this Appeal is pay and recover order passed by the Tribunal.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, there was breach of terms and conditions of the Insurance Policy that at the time of the accident driver of the offending vehicle was not holding effective and valid driving license, but the Tribunal has passed pay and recover order, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the Order passed by the Tribunal is proper. The learned counsel further submitted that, the Tribunal has awarded consortium amount to one Claimant

only, it should be awarded to all the Claimants.

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

5. It has come on record that, at the time of the accident the driver of offending vehicle was not holding effective and valid license. Considering this fact the Tribunal has passed pay and recover Order. I do not find infirmity in it. It is settled principle of law that, if there is any breach of terms and conditions of the policy, the Insurance Company should pay compensation and recover it from the owner of the offending vehicle.

6. It is contention of the learned counsel for the Appellant that, income of deceased is considered on higher side. To prove the income of deceased the Claimant No.1 examined herself. She has stated that, her husband was owner of the pickup tempo and was doing transport business. His monthly income was Rs.10,000/-. The Tribunal has considered at Rs.8,000/- per month. I do not find infirmity in it, as the deceased was owner of the pickup tempo and he was doing

transport business as well as he was maintaining family of six persons. The Tribunal has awarded consortium amount to widow of deceased. As per view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹, each Claimant is entitled for Rs.48,000/- consortium amount. There are five Claimant's, it comes to Rs.2,44,000/-.

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

ORDER

- (i) The Appeal is dismissed.
- (ii) The Respondents/Claimants are entitled for enhanced amount of Rs.2,44,000/- @ 7.5% per annum from 1st November 2017 till realization of amount.
- (iii) The Appellant-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
- (iv) The Appellant-Insurance Company shall pay award amount along with interest awarded by the Tribunal and enhanced amount along with accrued interest to the Claimant's and recover it from the owner of the vehicle.
- (v) The Claimant's are permitted to withdraw

1 2018 ACJ 2782 (SC)

deposited amount alongwith accrued interest thereon.

(vi) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)