IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 351 OF 2023

	IFFCO-TOKIO Gneral Insurance Co. Ltd. Through its Authorized Representative Suny Bhandary, Having its office 2nd Floor, ALF Tower, Lok Bharti Complex, Marol Maroshi Road,Andheri (East), Mumbai – 400 059 Ins.Validity 12.03.2011 to 11.03.2012 Now at 3rd Floor, Iffco Bhavan, 181 Waterfield Road, Next to Jammu and Kashmir Bank, Bandra (West), Mumbai – 400 050.	…	Appellant
	versus		
1	Jyoti Deepak Mayekar, Aged 52 years (Mother of deceased)		
2	Trupti Deepak Mayekar, Aged 29 years (Sister of deceased) Residing at: Room No.1077, Shivaji Nagar, Opp. Pushpa Bhavan, Bhandarwada, Sion (East), Mumbai – 400 022.		
3	Pramila K. Patyane, Porna Village, Tal. Bhiwandi, District Thane, (Owner of M/Bus No.MH-04-G-7499) (FA stands dismissed as against Respondent No.3 vide Registrar (Judicial-II) Court's order dated 1st February 2024.	….	Respondents

Mr. Rajesh Kanojia i/b. Res Juris, Advocates for the Appellant.
Ms. Kavita Anchan i/b. Mr. Vishal A. Dhonde, Advocate for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th MARCH, 2024.

Oral Judgment. :

1. The issue involved in this appeal is dishonour of cheque issued as premium of the insurance policy.

2. It is contention of learned counsel for the appellant that the owner of the offending vehicle had paid premium of insurance policy through cheque but the said cheque was dishonoured. The appellant-Insurance Company immediately informed the RTO regarding cancellation of the cover note and and the policy was cancelled but this fact is not considered by the Tribunal. Hence, requested to allow the application.

3. Learned counsel for the respondent Nos.1 and 2/claimants submitted that no evidence was produced before the Tribunal to show that the premium of the insurance policy was received by way of cheque. The letter written to insured regarding dishonour of the premium cheque was not produced before the Tribunal. The order passed by the Tribunal is legal and valid, hence, no interference is required in it.

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

5. To prove the defense, the Appellant-insurance Company has examined Mr. Pinakeen, Manager of the Insurance Company at Exhibit-35. He has stated that cheque No.860269 was issued by the owner of

the vehicle for an amount of Rs.26686/- towards the premium amount, it was dishonoured for insufficient funds. He further stated that it was immediately informed to RTO regarding cancellation of the cover note and policy was cancelled. In cross-examination, he admitted that the premium register is not brought before the Tribunal to show the entry of cheque and there is nothing on record to show that the premium is received by the company by way of cheque. The letter written to the insured regarding dishonour of premium cheque was not produced before the Tribunal as it was misplaced. The letter showing that separate letter was issued to the insured informing him about the cancellation of the policy was not produced before the Tribunal. Considering the admissions given by the witness of the appellant – Insurance Company, the Tribunal has observed that the appellant failed to produce the evidence regarding cancellation of the insurance policy and dishonour of the cheque. I do not find infirmity in it. In my view, the appellant-Insurance Company should have produced the letter given to the owner of the offending vehicle regarding cancellation of the insurance policy and dishonour of the cheque. Moreover, no register was produced on record to show that the premium of insurance was received by cheque. Hence, I do not find merit in the contention that the policy was cancelled due to dishonour of the cheque.

The Tribunal has not awarded consortium amount. 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 consortium amount of Rs.48,000/-. There are two claimants. Hence, they are entitled to Rs.96,000/- as consortium amount.

6. Considering the above reasons, I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are entitled for an additional amount of Rs.96,000/- towards consortium amount @ 7.5% per annum from 1st November 2017 till realisation of the amount.
3. The appellant-Insurance Company shall deposit the additional amount along with accrued interest thereon within six weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
6. The claimants shall pay court fees on enhanced amount as per Rule.

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

(SHIVKUMAR DIGE, J.)