IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 53 OF 2001

	The New India Assurance Co. Ltd., Having its office at Sharda Centre, 2nd Floor, Karve Road, Pune-411 004	..	Appellant
	Versus		
1	Baburao Aburao Kakade Age – 62 Yrs., Occu – Agriculturist	..	Respondent No.1 (Org. Applicant No.1)
2	Krishnabai Baburao Kakade Age – 54 Yrs., Occ. - Household Both R/o. Kikvi, Tal.-Bhor, Dist.-Pune	..	Respondent No.2 (Org. Applicant No.2)
3	Devidas Bhimrao Shinde Adult, Occ. - Driver, R/o. - Durgadevi Temple, Kolhapur	..	Respondent No.3 (Org. O.P. No.1)
4	Manohar Balasaheb Konduskar Adult, Occ. - Business, R/o. Mahagaon, Tal. Gadhinglaj, Dist. - Kolhapur	…	Respondent No.4 (Org. O.P. No.2)

With
FIRST APPEAL NO. 51 OF 2001

	The New India Assurance Co. Ltd., Pune Having its office at Sharda Centre, 2nd Floor, Karve Road, Pune-411 004.	..	Appellant Orig. O.P.No.4
	Versus		
1	Chandrabhagabai Jangal Dange Age – 53, Occ.-Household, R/o. -188, Ravivar Peth, Near Sainik Bank, Satara	..	Respondent No.1 Org. Applicant
2	Manohar Balasaheb Konduskar Adult, Occ. - Business, R/o. Mahagaon, Tal. - Gadhinglaj, Dist.- Kolhapur	..	Respondent No.2 Org. Appli.No.2

Mr. Devendranath S. Joshi, Advocate for the Appellants.
Mr. A. V. Konde-Deshmukh along with Rohin R. Chauhan i/b. Mr. Vitthal Konde-Deshmukh, Advocate for Respondent Nos.1 and 2 in FA/53/2001.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th JANUARY, 2024.

Oral Judgment :

1. Appellant-Insurance Company has preferred these appeals against the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short "the Tribunal"). As both these appeals are out of the same accident, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that deceased were traveling in petrol tanker vehicle. They were gratuitous passengers but the Tribunal has fixed liability on the Insurance Company, which is not proper. The Tribunal should have exonerated the Insurance Company. Hence, requested to allow the appeal.

3. Though respondent/owner of the offending vehicle is served, none present on his behalf.

4. Learned counsel for respondents/claimants in both appeals submitted that while passing the order, the Tribunal has considered all the aspects and, on that basis, judgment and order is passed, no interference is required in it.

5. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

6. While dealing with the issue of fixing liability, the Tribunal has observed that the Insurance Company has not proved whether extra premium was taken from the owner of the vehicle to cover the risk of the passengers in the tanker in question by producing policy. The Tribunal further observed that Insurance Company failed to prove that opponent/owner of the vehicle committed breach of terms and conditions of the policy. As the Insurance Company failed to establish that no additional premium was taken from opponent No.2, adverse inference has to be drawn that opponent No.2, owner of the vehicle had paid additional premium to cover the risk of the passengers, therefore, Insurance Company is liable to pay the compensation. In my view, the observation of the Tribunal is erroneous as it has come on record that deceased were traveling in the tanker which was a commercial vehicle and there was breach of terms and condition of the insurance policy. As per the view of Hon'ble Apex Court in ***Manuara Khatun & Ors vs Rajesh Kr. Singh & Ors. reported AIR 2017 SC 1204,*** the Insurance Company has to pay compensation to the claimants and recover it from the owner of the vehicle.

It is the contention of learned counsel for appellant-Insurance Company that interest rate is awarded on higher side. Considering the compensation awarded to the claimants in both appeals, the interest rate is proper and no interference is required in it.

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

1. Both the appeals are allowed.
2. The Insurance Company shall pay the compensation amount as fixed by the Tribunal in both the appeals to the claimants in both appeals and recover it from the owner of the offending vehicle.
3. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

The first appeals stand disposed of.

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

(SHIVKUMAR DIGE, J.)