IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1351 OF 2022
WITH
CROSS OBJECTION (ST) NO.8651 OF 2023

The New India Assurance Co. Ltd. }
B-201, Pinak Galaxy, Opposite Big Bazar, }
Kapurbaudi Junction, Majiwada, }
Thane (W). }
At present Address : }
The New India Assurance Co. Ltd. }
Mumbai Claims HUB }
41, B 4th Floor, Market Tower-E, }
Opp. World Trade Centre, }
Cuffe Parade, Mumbai-400005. } **...Appellant**

Versus

1. Shri.Nandkishore Kalluprasad Kanojiya }
Age-Adult, Occ : Nil }
Father of the deceased

2. Mrs.Ranno Nandkishore Kanojiya }
Age-Adult, Occ : Household, }
Mother of the deceased }
Both are R/o. Plot No.D-95, Shivkaruna }
Apts., Sector-20, Narul, Navi Mumbai. }

3. Mr.Prashant G. Patil }
Age-Adult, Occ : Business }
Jaiganaraj B-06, F/ No.13, Sector No.-20, }
Nerual, Navi Mumbai }
(Owner of Bike Bearing No.MH-43-AK- }
5157) } **....Respondents**

Ms.Jyoti Bajpayee, for the Appellant.
Ms.Rina Kundu, for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

. This Appeal is preferred by the Appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal (for short 'The Tribunal'), Thane. The Respondent-Claimant's have also filed Cross Objection for enhancement of compensation. As Appeal and Cross-objection are against same judgment and order, I am deciding it by this common judgment.

2. It is contention of the learned counsel for the Appellant that, at the time of the accident driver of the offending vehicle was not holding effective and valid driving license. To prove the said fact the Appellant has examined witness, but his evidence is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Claimant that, the Tribunal has considered monthly income of the deceased at Rs.5,000/-, which is on lower side. The learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount awarded on lower side. Hence, requested to allow the Cross objection and dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

5. To prove its defence the Appellant has examined Mrs.Shalini Bhosale, Assistant Manger of Insurance Company at Exhibit-48. She has stated that as per the investigation report and the Police papers which are filed on record, it is evident that the driver was not holding valid and effective driving license as on the date of the accident. The notice was given by the Appellant-Insurance Company to the owner of the offending vehicle to produce the driving license. She further stated that there is nothing mentioned about the driving license in the Police papers. In cross-examination she admitted that the appointed Investigator visited to owner and driver of the offending vehicle.

He has not collected any information in respect of the driving license of the driver of the offending vehicle. She further admitted that their company had send a letter to the owner of the offending vehicle. The Appellant has examined Vijay Dhatrak Investigator. He has stated that during the investigation he visited the Police Station and he issued a letter for obtaining the certified copy of the driving license and other documents. He did not receive the copy of the driving license. He further stated that during investigation the insured denied to co-operate and he did not furnish any document. He issued letter to him to produce calling upon him the certain documents in respect of the accident.

6. In cross-examination he admitted that he has not obtained acknowledgment in respect of receipt of letter at Exhibit-36. He further admitted that in charge-sheet it is not mentioned that driver of the offending vehicle was not holding valid and effective driving license. He further admitted that in acknowledgment at Exhibit-14 detailed address of the owner of the offending vehicle is not mentioned. There is no stamp on the

acknowledgment of the office at Exhibit-14. He further admitted that he made enquiry about the permanent address of the driver of the offending vehicle, but he could not collect it. He further admitted that he had not made any correspondence to the RTO in respect of the driving license of the driver of offending vehicle.

7. While dealing with the issue of driving license, the Tribunal has observed that Insurance Company failed to prove that at the time of accident driver of the offending vehicle was not holding valid and effective driving license. Thus there is no breach of Terms and Conditions of the Insurance Policy. I do not find infirmity in it.

8. In my view, it has come in the evidence of defence witnesses that no enquiry was made with RTO about driving license of the driver of the offending vehicle. The RTO Authority is proper authority to say about driving license of the driver but no enquiry was made with the said authority. Hence, I do not see merit in the contention that the driver of the offending vehicle was not holding valid driving license at the time of the accident. The Tribunal has considered monthly income of the

deceased at Rs.5,000/- per month, but while awarding compensation the Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1]**,** the Claimant is entitled for 40% future prospects, I am considering 40% future prospects. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2]**,** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering this calculation the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.5,000.00
(+) Future Prospects (40%)	Rs.2,000.00
Annual Income After Future Prospects	**Rs.7,000.00**
(-) Personal Expenses (½ amount)	Rs.84,000.00
Multiplier 18 Rs.42,000/- X 18	**Rs.7,56,000.00**
Tribunal Awarded	**Rs.5,40,000.00**
Enhanced Amount	Rs.2,16,000.00

1 2017 ACJ 2700 (SC)
2 2018 ACJ 2782 (SC)

Consortium for 2 Rs.48,000/- x 2	Rs.96,000.00
Total Enhanced amount payable	**Rs.3,12,000.00**

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

ORDER

(i) The Appeal is dismissed.

(ii) Cross objection is allowed.

(iii) The Claimant is entitled for enhanced amount of Rs.3,12,000/- @ 7.5 % interest from the date of filing of the Claim Petition till realization of the amount.

(iv) The Appellant-Insurance Company shall deposit enhanced amount alongwith interest within eight weeks after receipt of the order.

(v) The Claimant is permitted to withdraw the deposited amount.

(vi) In First Appeal No.3151 of 2022 the statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

(vii) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.

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

(SHIVKUMAR DIGE, J.)