IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 583 OF 2017

	United India Insurance Company Limited **Motor Third Party Hub** Union Cooperative Insurance Building, Fort, 5th Floor, Mumbai – 400 001.	))))	Appellant (Orig Insurer)
	versus		
1	Smt.Manjula Ramashankar Saroj Aged : 24 years, Widow of the deceased	))	Orig. Applicant No.1
2	Kum. Aarti Ramashankar Saroj Aged 3 yr, daughter of the deceased	))	Orig Applicant No.2
3	Kum. Manoj Ramashankar Saroj Aged 1 ½ years, son of the deceased	))	Orig Applicant No.3
4	Shri. Hiralal Ramkishor Saroj Aged 54 years, father of the deceased Applicant Nos. 2 & 3 Minor, through mother & next friend Smt. Manju Ramshankar Saroj Applicant No.1 residing at Sahayog Rahivashi Sangh, Survya Nagar, Vikhroli, Mumbai – 400 083 deleted and Respondent No.1 to 3 are impleaded as legal heirs of Respondent No.4 as per order dated 18.7.2019	)	Orig. Applicant No.4
5	Mahindra Singh S/o Kulwant Singh Bldg No.18, R. No.621, Chembur Camp, Mumbai (Owner of Motor Tempo No. GJ-06-U-5353)	))))	Orig. Opposite Party Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. T. J. Mendon a/w. Mr. T.R.Kale, Advocate for Respondent Nos. 1 & 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is cancellation of cover note.

2. It is contention of learned counsel for the appellant-Insurance Company that the cover note in respect of the offending vehicle was cancelled by the agent of the insurance company, but this fact is not considered by the Tribunal and has awarded compensation, which is erroneous. Hence requested to allow the appeal.

3. It is contention of learned counsel for respondents/claimants that though the defense was taken by the appellant- insurance company that cover note was cancelled but no such document was given to the owner of the offending vehicle about the cancellation of the cover note. The Tribunal has considered all the aspects at the time of passing the judgment and order. No interference is required in it.

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

5. To prove its defense, the appellant- insurance company has examined Mr. Rawat, agent of insurer. He has stated that on 16th April 1999, he prepared the cover note bearing No.647428 in respect of the insurance coverage of the motor tanker involved in the accident. After preparing the cover note, the premium was not paid to him and the person concerned told him that he did not have sufficient funds to pay the

premium, therefore, he retained the original cover note with himself, put the endorsement of cancellation of cover note on the said cover note. Then he forwarded the original cover note and letter regarding the cancellation of cover note to the branch office of the insurer at Thane. In support of their defense, the insurer has examined DW2- Nagda, Assistant Manager of appellant – Insurance Company. He has stated that original cover note has been lost during the shifting of records, during his evidence, produced the copy of the cover note bearing No.647248. While dealing with this issue, the Tribunal has observed that the original cover note bearing No.647248 regarding the insurance cover of the motor tanker involved in the accident was issued by Mr. Rawat who is the agent of the insurer. He must have either received the premium, which he failed to remit to the insurance company. Once, the agent of the insurer delivered the cover note to the insured or his representative and the said cover note, thereafter was never called back either by agent or insurer, then it goes without saying that there was an insurance coverage to the third party in respect of motor vehicle involved in the accident. The Tribunal has observed that the insurer has totally failed to prove that at the material time, the motor tanker involved in the accident was not insured with it. In the certified copy of the cover note at Exhibit-10, there is no endorsement of cancellation of the said cover note. As per the said cover note, it was valid and effective from 16th April 1999 to 15th April 2000. The vehicular accident, in which the deceased, lost his life had taken place on 23rd July 1999. Thus on the date of the accident, the insurance cover was valid and effective as per the certified copy of the cover note and on that basis the Tribunal has passed the impugned judgment. I do not find infirmity in it. In my view, it has come on record in the evidence of witness – Rawat that he had informed the appellant-Insurance Company about cancellation of insurance policy but insurance policy was not cancelled nor copy of cover note given to owner of offending vehicle was called back or notice was not given to him. Hence, I do not see merit in contention that there was no coverage of insurance policy to the offending vehicle.

The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are four claimants, so the total comes to Rs.2,28,000/-. If from this amount, Rs.13,500/- granted by the Tribunal is deducted, it comes to Rs.2,14,500/-. The claimants are entitled for this amount.

6. In view of above, 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 enhanced amount of Rs.2,14,500/- towards consortium @ 7.5% interest 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.

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

(SHIVKUMAR DIGE, J.)