

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1802 OF 2019
WITH
FIRST APPEAL NO.1803 OF 2019
WITH
FIRST APPEAL NO.1804 OF 2019**

Reliance General Insurance Co. Ltd. }
4th Floor, Chintamani Avenue, Opp. }
Western Express Highway, Next to Virwani }
Industrial Estate, Goregaon (E), }
Mumbai-400063 }

...Appellant

**NILAM
SANTOSH
KAMBLE**

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by NILAM
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Date: 2024.04.16
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Versus

1. Mr.Gajrabai Dattu Dhonde }
Age-58 years, Grand Mother of the deceased }

2. Madhukar Dattu Dhonde }
Age-39 years, Uncle of the deceased }
Both R/at Vinayak Society, Room No.009, }
Singh Estate Road No.1. Samta Nagar, }
Kandivali (E), Mumbai-400 101 }

3. Dharmaraj Dattu Dhonde (Dead) }
Dattu Bala Dhonde }
(Father of the deceased) }
30, Ganesh Nagar Zopadpatti, Tata Power }
up, Lijjat Papad Path, Borivali (E), }
Mumbai-400 066 }

4. Vishwas V. Ghosalkar }
At Savroli, Post Khalapur, Bazar Gate, }
District-Raigad-400 218 }

5. **ICICI Lombard General Insurance Co. }**
Ltd., }
 Lombard House, 414, Veer Savarkar Marg, }
 Near Siddhivinayak Temple, Prabhadevi, }
 Mumbai-400 025. }Respondents

**WITH
FIRST APPEAL NO.1805 OF 2019**

Reliance General Insurance Co. Ltd. }
 4th Floor, Chintamani Avenue, Opp. }
 Western Express Highway, Next to Virwani }
 Industrial Estate, Goregaon (E), }
 Mumbai-400063 } ...Appellant

Versus

1. **Kum.Aditi Dinkar Pawar }**
 Age-7 years, Sister of the deceased }
 Thr. Her Grandfather & Next Friend }
 Nathu Bala Dhonde, }
 Age-57 years, Father of the deceased }
 R/at Dhondewadi, Post-Alewadi, }
 Taluka-Jawavli, District-Satara. }

2. **Dharmaraj Dattu Dhonde (Dead) }**
Dattu Bala Dhonde }
 (Father of the deceased) }
 30, Ganesh Nagar Zopadpatti, Tata Power }
 up, Lijjat Papad Path, Borivali (E), }
 Mumbai-400 066 }

3. **Vishwas V. Ghosalkar }**
 At Savroli, Post Khalapur, Bazar Gate, }
 District-Raigad-400 218 }

4. **ICICI Lombard General Insurance Co. }**
Ltd., }
 Lombard House, 414, Veer Savarkar Marg, }
 Near Siddhivinayak Temple, Prabhadevi, }
 Mumbai-400 025. }Respondents

**WITH
FIRST APPEAL NO.1806 OF 2019**

Reliance General Insurance Co. Ltd. }
 4th Floor, Chintamani Avenue, Opp. }
 Western Express Highway, Next to Virwani }
 Industrial Estate, Goregaon (E), }
 Mumbai-400063 } ...Appellant

Versus

1. **Ravindra Ananda Dhonde }**
 Age-43 years, Husband of the deceased }

2. **Kumar Pratik Ravindra Dhonde }**
 Age-14 years, Son of the deceased }
 R/at Rambhau Shinde Chawl, R. No.7, Old }
 Nagardas Road, Behind Classic Hotel, Patel }
 Wadi, Andheri (E), Mumbao-400 069. }

3. **Dharmaraj Dattu Dhonde (Dead) }**
Dattu Bala Dhonde }
 (Father of the deceased) }
 30, Ganesh Nagar Zopadpatti, Tata Power }
 up, Lijjat Papad Path, Borivali (E), }
 Mumbai-400 066 }

4. **Vishwas V. Ghosalkar }**
 At Savroli, Post Khalapur, Bazar Gate, }
 District-Raigad-400 218 }

5. ICICI Lombard General Insurance Co. }
Ltd., }
Lombard House, 414, Veer Savarkar Marg, }
Near Siddhivinayak Temple, Prabhadevi, }
Mumbai-400 025. }Respondents

Ms.Poonam Mital, for the Appellants in all Appeals.
Ms.Varsha Chavan, for Respondent Nos.1 and 2 in all Appeals..

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :-

. All these Appeals are preferred against the order passed under Section 140 of the Motor Vehicles Act, ('M.V. Act' for short), 1988 by Motor Accident Claims Tribunal ('The Tribunal' for short), Mumbai. The issue involved in these Appeals is same, hence, I am deciding by this common judgment.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Appellant has taken three grounds in their written statement that the Policy of offending vehicle was act only policy, the Driver of the offending vehicle was not holding effective and valid driving license and

non-involvement of the offending vehicle. These grounds were argued at the time of the hearing of the Application under Section 140 of the M.V. Act, but Tribunal has not considered and passed impugned order. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent's-Claimant's that, the order passed by the Tribunal is under no fault liability. The evidence is required to prove the defence taken by the Insurance Company. Hence requested to dismiss the Appeal.

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

5. It is contention of the learned counsel for the Appellant-Insurance Company that issues raised by the Insurance Company have not been considered by the Tribunal while passing judgment and order. In my view, while passing the order the Tribunal has observed that evidence is required to be considered in respect of defence taken by the Insurance Company. I do not find infirmity in it. In my view, if contentions of both the parties would kept open and direct them to lead

evidence in support of their contentions would suffice purpose and I pass following order.

ORDER

- (i) All Appeals are dismissed.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith interest thereon in all Appeals.
- (iii) All contentions of both the parties are kept open.
- (iv) Both the parties can lead evidence in support of their contention before the Tribunal in hearing under Section 166 of the M.V. Act.
- (v) The Tribunal shall not influence the observations of this Court while passing judgment and order under Section 166 of the M.V. Act., it be decided on its own merits.
- (vi) The statutory amount alongwith interest in all respective Appeals 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 in all Appeals.

(SHIVKUMAR DIGE, J.)