IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 981 OF 2017

	Future Generali India Insurance Co. Ltd. 3rd Floor, At Lake City Mall, Kapurbaudi Junction, Majiwada, Dist. Thane (West)	Appellant …
	Versus	
1	Garima Gajendra Vyas Occupation – Nil, Age-26 years	
2	Chhavi Gajendra Vyas Age-3 years, Occ-Nil	
3	Leela Gajendra Vyas Occ-Nil, Age-56 years (Applicant No.2 being minor, She is appearing through her mother/natural guardian i.e. applicant No.1)	
4	Mr. Govind P. Manganale Pralhad Chawl, Ghodbunder Gaon, Velkar Nagar, Near Modern Company, Post Kashimira, Dist. Thane- 401107	… Respondents

WITH
FIRST APPEAL NO. 946 OF 2022

1	Garima Gajendra Vyas age about 37 years, Occupation Housewife, (Widow of the deceased)	
2	Kumari Chhavi Gajendra Vyas age about 15 years, Occupation Student (Daughter of the deceased)	
3	Smt. Leela Tulsidas Vyas age 68 years, Occupation Nil (Mother of deceased) Applicant no.2 is minor, therefore, representing through her mother, natural guardian, applicant no.1. All applicants are residing at 35, Rajendra Nagar, Gariya Vas, Dist. Udaypur, Rajasthan.	… Appellants

Versus

1	Govind P. Manganale R/at Pralhad Chawl, G.B.Road, near Marden Company, Bhayandar East. **Amendment carried out as per order dated 9.11.2022.** R/at Pralhad Chawl, Ghodbunder Gaon, Velkar Nagar, Near Modern Company, Post Kashimira, Dist. Thane – 401 107.	
2	Future General Insurance Company Limited, Through its Manager having their office at 3rd Floor, Lake City Mall, Kapurbawdi Junction, Majiwada, Dist. Thane West	… Respondents

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Ms. Rina Kundu, Advocate for the Appellant in FA/946/2022 and for Respondent Nos. 1 to 3 in FA/981/2017.
Mr. D. R. Mahadik, Advocate for Appellant in FA/981/2017 and for Respondent No.2.
Mr. Govind B. Solanke, Advocate for Respondent No. 4 in FA/981/2017 and for Respondent No.1 in FA/946/2022.

CORAM : SHIVKUMAR DIGE, J.
DATE : 10th APRIL, 2024

ORAL JUDGMENT :

1. This appeal is preferred by the appellant /Insurance Company. The claimants have also preferred cross appeal for enhancement of compensation. As appeal and cross appeal are against the same Judgment and Order, hence I am deciding it by this common Judgment.

2. It is contention of learned counsel for the Insurance Company that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence. To prove the said fact the appellant has examined their officer. He has produced R.T.O. extract on record but his evidence has not been considered by the Tribunal. Learned counsel further submitted that there was breach of terms and conditions of insurance policy. The Tribunal should have passed pay and recover order. He further submitted that owner of the offending vehicle did not appear before the Tribunal and has not produced driving licence of the driver before the Tribunal hence requested to allow the appeal.

He relied on :

(a) Ram Babu Tiwari V/s. United India Insurance Company Limited and Others reported in (2008) 8 SCC 165

(b) New India Assurance Company Ltd. V/s. Karbhari s/o. Hiralal Shinde & Anr. reported in 2010(5) ALL MR 163

(c) Beli Ram V/s. Rajinder Kumar and Another reported in 2020 ACJ 3000

3. It is contention of learned counsel for respondent/owner of offending vehicle that at the time of accident, the driver of offending vehicle was holding effective and valid driving licence. The notice of the claim petition was not served on the owner of the vehicle hence owner of the vehicle could not file his written statement before the Tribunal and matter proceeded ex-parte against the present Respondent. The extract of the driving licence of driver of offending vehicle produced on record shows that the driving licence was valid upto year 2013 whereas accident occurred in the year 2010. No witness from R.T.O. office has not been examined. The Tribunal has considered all the aspects while passing the Judgment and Order, hence no interference is required in it.

4. It is contention of learned counsel for respondent/claimants that while awarding compensation the Tribunal has not awarded future prospects. Learned counsel further submitted that interest on compensation amount is not awarded from the date of filing claim petition it be awarded.

5. Learned counsel for the appellant submitted that compensation awarded under non pecuniary head is on higher side it be reduced.

6. I have heard all the learned counsels. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short "**the Tribunal**"). To prove their defence that driver of offending vehicle was not holding effective and valid driving licence at the time of accident. The appellant/Insurance company has examined their Legal Officer Santosh More at Exhibit-51. He has stated that driver of the offending vehicle was not holding effective and valid driving licence at the time of accident i.e. on 06.06.2010. He further stated that their company had sent letter to the owner of the vehicle to produce the proof. He further stated that he did not produce those documents. There was breach of terms and conditions of insurance policy. In cross examination he admitted that their company had appointed the investigator and he has not filed investigator's report on record. He further admitted that he has not filed on record the copy of notice issued to owner of the offending vehicle. The R.T.O. extract of the driving licence of the driver of offending vehicle is at Exhibit-53. While dealing with the issue of driving licence the Tribunal has observed that the driving licence extract Exhibit-53 shows that Mr. Sachin, driver of offending vehicle was holding driving licence for LMV Transport (Goods) w.e.f. 05.02.2007 and transport vehicle licence w.e.f. 20.05.2008 and validity (transport) upto 30.12.2013. The accident occurred on 06.06.2010 thus on the date of accident the driver of offending vehicle was holding driving licence of transport vehicle. I do not find infirmity in it, as Exhibit-53 shows the validity of the licence upto 30.12.2013. It is the contention of learned counsel for appellant that the details i.e. R.D.L. (Renewal driving licence) given in the said extract about issuance of licence shows that it was not valid on the date of accident and after the accident it was renewed on 12.01.2011. In my view, the extract of the driving licence of the driver of offending vehicle was produced under Right to Information Act. It has come in the evidence of DW-1 that investigator was appointed but no investigator's report is produced on record to show that driver was not holding valid driving licence. Moreover, to prove the details, that driving licence renewed on

12.01.2011 the concerned person from the R.T.O. was required to be examined before the Tribunal. Mere from the entry of extract this Court cannot consider the said fact, moreover DW-1 has not stated in his evidence that the said licence was expired and thereafter it was renewed on 12.01.2011. It is settled principle of law that if defence is taken by the Insurance Company about the driving licence it has to be proved through the proper authority i.e. R.T.O. hence I do not see merit in the contention that at the time of accident driver was not holding effective and valid driving licence.

7. I have gone through the case-laws cited by the learned counsel for the appellant. The facts of cited case and case at hand are different as in the present case Exhibit-53 produced on record by the appellant shows that driving licence was valid upto 30.12.2013 and there is no evidence from R.T.O. to shows that on the date of accident it was not valid.

7.1. While awarding compensation the Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)***, the claimants are entitled for 50% future prospects.

7.2. The Tribunal has awarded Rs.2,25,000/- under non pecuniary heads it is on higher side. As per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ***

2782 (SC), each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three claimants. Total comes to Rs.1,80,000/- . If this amount deducts from Rs.2,25,000/- it comes to Rs.45,000/-.

8. Considering the above calculations, the claimants are entitled for following compensation:

Particulars	**Rs.**	**Entitlement**
Monthly Income	Rs.	44,357.00
Future prospects 50%	Rs.	22,178.50
Total Income (Rs.44,357 + Rs.22,178.50)	Rs.	66,535.50
Deduction 1/3	Rs.	22,178.50
Income 2/3	Rs.	44,357.00
Multiplier Rs. 44,357 X 12 X 16	Rs.	85,16,544.00
Consortium (Rs.48,000/- X 3 claimants)	Rs.	1,44,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	**86,96,544.00**
Less compensation awarded by the Tribunal	Rs.	59,02,696.00
Total enhanced amount	Rs.	**27,93,848.00**

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

<u>O R D E R</u>

i. F.A. No. 981 of 2017 is partly allowed.

ii. F.A. No. 946 of 2022 is allowed.

iii. The claimants are entitled for enhanced amount of Rs.27,93,848/- the amount of @ 7% interest per annum from the date of filing of the claim petition till realisation of the amount.

iv. The Insurance Company shall deposit the enhanced amount along with interest within eight weeks after receipt of the order. The claimants are entitled to withdraw the amount after depositing by Respondent-Insurance Company.

v. The claimant shall pay deficit Court fees on enhanced amount as per rule.

vi. The appellant/Insurance Company requests for stay of the order as the date of accident is 06.06.2010 hence I am not inclined to stay the order.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.05.03 17:10:30 +0530