

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1300 OF 2023

SBI General Insurance Co. Ltd.	]
The Divisional Manager,	]
Mumbai Divisional Office, 3 rd Floor, Metro House,	]
M.G.Road, Central Building, Mumbai-400020	] Appellant

Versus

1 Salama Shahansha Pathan	]
Age : About 21 years	]
2 Ruhan Shahansa Pathan	]
Age about 8 months	]
3 Munsikha Akabrka Pathan	]
Aged about 59 years	]
4 Roshanbi Munsikhan Pathan	]
Age about 54 tears	]
All R/at. Mukam Post Antarvali (Budruk), Taluka -	] Original
Georai, Dist Beed, Maharashtra -431127	] Applicants
5 Suman Sanjaykumar Mittal	]
FLH-H-06/3, Spaghetti, Sector No.15, Kharghar,	]
Panvel, Dist. Raigarh	] Respondent

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Ms. Shalini Shankar, Advocate for the Appellant.

Ms. Rina Kundu, Advocate for Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th MARCH, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is pay and recovery order passed by the Tribunal.

2. It is contention of learned counsel for the appellant/Insurance Company that at the time of accident, driver of offending vehicle was

holding fake driving licence. The Tribunal has considered this fact but while passing order, the Tribunal has passed pay and recovery order it is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 to 4/ claimants that it is settled principle of law that if there is breach of terms of conditions of insurance policy and the vehicle was insured, the appellant/Insurance Company has to pay compensation and recover it from the owner of the vehicle. The Tribunal has considered all the aspects while passing the order. No interference is required in it. Learned counsel further submitted that the Tribunal has given consortium amount to only one claimant. There are three claimants. The consortium amount has not awarded to other three claimants, it be awarded.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short **“the Tribunal”**). While dealing with the issue of driving licence, the Tribunal has observed that at the time of accident, driver of offending vehicle was not holding effective and valid driving licence. The licence produced on record appears to be fake, therefore, it is breach of terms and conditions of insurance policy. The Tribunal has further observed that there is bipartite agreement between the insured and insurer, the third party should not suffer, therefore principle of pay and recover does get

attracted. I do not find infirmity in it. In my view, it is settled principle of law that if there is breach of terms and conditions of insurance policy, the insurance company is liable to pay compensation and recover it from the owner of the vehicle. The Tribunal has awarded consortium amount to only one claimant. As per the view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹, each claimant is entitled to Rs.48,000/- as consortium amount. There are three claimants. Total comes to Rs.1,44,000/-.

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

ORDER

- i. The appeal is dismissed.
- ii. The claimants are entitled for enhanced amount of Rs.1,44,000/- @ 7.5% interest per annum from 1st November, 2017 till realisation of the amount.
- iii. Appellant/Insurance company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the date of receipt of this order.
- iv. The claimants are permitted to withdraw deposited amount along with accrued interest.
- v. The appellant/Insurance Company is at liberty to recover the compensation amount along with accrued interest

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thereon from the owner of the offending vehicle.

- vi. The claimants shall pay deficit court fees on the enhanced amount as per rule.
- vii. The statutory amount be transmitted to Motor Accident Claims Tribunal, Thane along with accrued interest thereon.

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(SHIVKUMAR DIGE, J.)