IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL (ST) NO. 35629 of 2016

The Oriental Insurance Co. Ltd.)
Through Branch manager, Sadachar Mandir,)
Zadgaon Ratnagiri, Tal. Dist. Ratnagiri,)
Through Motor Third Party Claim Hub,)
MRO-II, S.B.I. Building, 3rd Floor,)
Bank Street, Fort, Mumbai - 400023)….Appellant
(Org. Insurer)

Versus

1. Runali Ravindra Taral)
Age: 40 years, Occ: Service,)
Both r/o. At & Post Harche, Tal. Lanja,)
Dist. Ratnagiri.)
2. Vinay Ashok Mayekar)
Age: 22 years, Occ: Driver,)
R/o. Pethkilla, Tal. Dist. Ratnagiri.)
3. Dattaguru Vinayak Keer)
Age: Major, Occ: Trade,)
R/o. A/p. Bhatimirya, Tal. Dist. Ratnagiri.)
4. Nilesh Vinod Takale)
Age: Major, Occ: Trade,)
R/o. Arman Bungalow,)
House of Ibrahim Dalvi,)
Opp. Swami Samrth Matha, Salvi Stop,)

Tal. Dist. Ratnagiri.)….Respondents

(Resp. 1 Org. Claimant,

Resp. Nos.2 to 4, Op. Nos. 1, 2 & 4)

WITH

FIRST APPEAL NO. 616 OF 2021

The Oriental Insurance Co. Ltd.)
Through Branch manager, Sadachar Mandir,)
Zadgaon Ratnagiri, Tal. Dist. Ratnagiri,)
Through Motor Third Party Claim Hub,)
MRO-II, S.B.I. Building, 3rd Floor,)
Bank Street, Fort, Mumbai - 400023)….Appellant

(Org. Insurer)

Versus

1. Rushikesh Ravindra Taral)
   Age: 13 years, Occ: Education,)
2. Runali Ravindra Taral)
   Age: 40 years, Occ: Service,)
   Resp. No.1 being minor through mother)
   natural guardian Resp. No.2)
   Both r/o. At& Post Harche, Tal. Lanja,)
   Dist: Ratnagiri.)
3. Vinay Ashok Mayekar)
   Age: 22 years, Occ: Driver,)
   R/o. Pethkilla, Tal. Dist. Ratnagiri.)
4. Dattaguru Vinayak Keer)
   Age Major, Occ: Trade,)

R/o. A/P Bhatimirya, Tal. Dist. Ratnagiri.)
5. Nilesh Vinod Takale)
Age: Major , Occ: Trade,)
R/o. Arman Bungalow,)
House of Ibrahim Dalvi,)
Opp. Swami Samarth Matha, Salvi Stop,)
Tal. Dist. Ratnagiri).....Respondents
(Resp. 1-2 Org. Claimants,
Resp. Nos.3 to 5, Op. Nos. 1, 2 & 4)

Mr. Devendranath S. Joshi a/w Pradyumna Thakurdesai, Advocate for the Appellant in both Appeals.
Mr. Chintamani K. Bhangoji, Advocate for the Respondent No.1 in both Appeals.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th APRIL, 2024.

Oral Judgment :

1. Both these appeals are preferred by the Appellant/Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Ratnagiri (for short “the Tribunal”).

2. The issue involved in both these appeals are same, Judgment is out of the same accident hence, I am deciding it by this common judgment.

3. It is contention of learned counsel for the Appellant/Insurance Company that at the time of accident, the driver of offending vehicle was not holding effective and valid driving licence, he was under the influence of alcohol. There was breach of terms and conditions of the Insurance Policy. The Tribunal should have exonerated the Insurance Company from paying compensation but pay and recovery order is passed, which is erroneous. Learned counsel further submitted that the original owner had sold the vehicle to the other person but this fact is not considered by the Tribunal. Learned counsel further submitted that in First Appeal No.616 of 2021, the Claimant No.2 wife of the deceased is working and she is getting salary of Rs.40,000/- per month. She cannot termed as dependent of the deceased. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Respondents/Claimants that the Tribunal has considered all the aspects while passing the judgment and order and no interference is required in it. Learned counsel further submitted that no documents produced on record by the Appellant/Insurance Company to prove that the offending vehicle was sold to other person and it was

intimated to R.T.O. Office.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Ratnagiri (for short "the Tribunal").

6. While passing pay and recovery order, the Tribunal has observed that at the time of accident, the driver of offending vehicle was not holding effective and valid driving licence as well as, at the time of accident, the driver was under influence of liquor and there was breach of terms and conditions of insurance policy and, on that basis, the impugned order is passed. I do not find infirmity in it.

7. 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 the compensation and recover it from the owner of the vehicle. No evidence is produced on record to show that owner of offending vehicle had sold the vehicle to other person. Hence, I do not see merit in the contention that the offending vehicle was sold to other person as well as, no evidence was produced on record to show that the said fact was intimated to the R.T.O. The claimant No.2 is wife of the deceased and there is no bar under the provisions of the MV Act that earning member cannot file claim

petition. Hence, I do not see merit in it.

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

ORDER

i. Both appeals are dismissed.

ii. The Claimants in both appeals are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

iv. In FAST/35629/2016 the delay of 221 day for filing the appeal is condoned. The appeal be registered for statistical purpose.

v. The appellant is at liberty to recover the award amount along with interest as per order of the Tribunal.

9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)