

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 9731 OF 2024 (withdrawal)****IN****FIRST APPEAL NO. 314 OF 2024**

Popat Nimba Suryawanshi and Anr.

... Applicants

IN THE MATTER OF :

Avani Sachin Chawala and Anr.

... Appellants

Versus

Popat Nimba Suryawanshi and Anr.

... Respondents

WITH**INTERIM APPLICATION NO. 1271 OF 2024 (stay)****IN****FIRST APPEAL NO. 314 OF 2024**

Reliance General Insurance Co. Ltd.

... Applicants

IN THE MATTER OF :

Reliance General Insurance Co. Ltd.

... Appellants

Versus

Popat Nimba Suryawanshi and Ors.

... Respondents

Mr. P K. Bohade, Advocate for the Applicants.

Mr. Avesh A. Ghadge i/b. Mr. Akshay Kulkarni, Advocate for Respondents.

CORAM : ARUN R. PEDNEKER, J.**DATED : 1st JULY, 2024.****P.C. :**

1. The present appeal is filed by the Insurance Company primarily on the ground that the driver of the insured vehicle was not holding a valid licence so also deceased was driving the motorcycle is partly negligent and the accident occurred due to contributory negligence of the deceased.

2. Perused the Judgment passed by the Tribunal. On the aspect of negligence, the Tribunal at paragraph No. 13 has held as under :

“13. At the outset, the police papers as well as the oral report nowhere indicate that the deceased was negligent. Rather, perusal of spot panchanama and testimony of eye witnesses as well as the police papers including the FIR indicate that it is the offending vehicle which was negligent. There was no case in the FIR setting out the negligence of the deceased.”

3. As regards driver not possessing licence and the breach of policy is concerned, there is no material brought on record with respect to the same and in any event that would be covered with the principle of pay and recover. In view of the same, I permit the applicant to withdraw 70% of the compensation as directed by the Tribunal along with accrued interest subject to filing of usual undertaking to the satisfaction of the Presiding Officer of the Tribunal.

4. Interim Application No. 9731 of 2024 for withdrawal of amount is allowed in the above terms.

5. The stay of the impugned order granted earlier stands confirmed till the final disposal of the appeal. Interim application No. 1271 of 2024 is disposed of.

6. Appeal is admitted.

7. Call R & P.

(ARUN R. PEDNEKER, J.)