IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1160 OF 2024

Cholamandalam M.S. General Insurance Co. Ltd. }
Office - 1st Floor, Rupa Plaza, Office No.103 and 103, Javahar Road, Above IDBI Bank, Ghatkopar (East), Mumbai Maharashtra-400071 } (Org. Opponent No.3)

...Appellant

Versus

1. Aparna Haribhau Divekar }
Age-45 years, Occ: Household }

2. Kishor Haribhau Divekar }
Age-28 years, Occ: Social Work, }
Nos.1 and 2 R/o Karoti, Post-Varsari, }
Taluka-Pen, District-Raogad. }

3. Hemlata Hemant Patil }
Age-31 years, Occ: Social Work }
R/at Vashivali, Post-Varsai, Taluka-Pen, }
District-Raigad }

4. Deepika Pratap Umbare }
Age-26 years, Occ: Household }
R/o. Undhewadi (Rajmachi), }
Post-Lonawala, Taluka-Maval, Dist-Pune }

5. Asha Vijay Barve }
Age-Adult, Occ: }

R/o Hatale, Post-Nagaon, Taluka-Alibag }
District-Raigad }

6. United India Insurance Co. Ltd. }
Office : R-14, Shribag, Above Central Bank, }
At Post Taluka-Alibag, District-Raigad. }

(R. No.1 to 4 are the Org. Claimants & R.No.5 & 6 are Org. Res. Nos.1 and 2 respectively

....Respondents

WITH
FIRST APPEAL NO.1158 OF 2024

Cholamandalam M.S. General Insurance Co. Ltd. }
Office - 1st Floor, Rupa Plaza, Office No.103 and 103, Javahar Road, Above IDBI Bank, }
Ghatkopar (East), Mumbai }
Maharashtra-400071 }

(Org.Opponent No.3)

...Appellant

Versus

1. Nirmala Anant Divekar }
Age-64 years, Occ: Household }

2. Santosh Anant Divekar }
Age-44 years, Occ: Social Work }

3. Rajendra Ananat Divekar }
Age-39, Occ : Social Work }
Nos.1 to 3 R/o Karoti, Post-Varsari, Taluka-Pen, District-Raigad. }

4. Ranjana Suresh Janire }
Age-41 years, Occ: Household }
R/oat Undhewadi (Rajmachi) }
Post-Lonawala, Taluka-Maval, District-Pune }

5. Asha Vijay Barve Age-Adult, Occ: R/o Hatale, Post-Nagaon, Taluka-Alibag District-Raigad	} } } }	
6. United India Insurance Co. Ltd. Office : R-14, Shribag, Above Central Bank, At Post Taluka-Alibag, District-Raigad.	} } }	(R. No.1 to 4 are the Org. Claimants & R.No.5 & 6 are Org. Res. Nos.1 and 2 respectively **....Respondents**

Mr.Sarthak Diwan, for the Appellant in both Appeals.
Mr.T.J. Mendon, for Respondent Nos.1 to 4.
Mr.Amol Gatne, for Respondent No.6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER 2024

ORAL JUDGMENT :-

. These two Appeals are preferred against judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Alibag, Raigad. As issue involved in these Appeals are same, hence, I am deciding it by this common judgment.

2. The issue's involved in these Appeals are driver of the insured vehicle was not holding effective and valid license, there was breach of terms and conditions of Insurance Policy.

3. It is contention of the learned counsel for the Appellant-Insurance Company that, at the time of accident driver of the offending vehicle was not holding effective and valid driving license. There was breach of Terms and Conditions of Policy, but the Tribunal has passed pay and recover order it is erroneous. The Tribunal should not have imposed liability of paying compensation on the Insurance Company. The learned counsel further submitted that, the Tribunal has considered monthly income of both the deceased on surmises and conjuncture without any evidence on record. The evidence led in both the matter are verbatim. Hence, requested to allow the Appeal's.

4. It is contention of the learned counsel for the Respondents-Claimants that, the deceased were farmers having bullock cart and they were also running bricklin. They were also getting income from milk. They were also doing business of selling rice and vegetables. The evidence in that regard was produced on record. They were getting around Rs.50,000/- per month from these business, but the Tribunal has considered their

income on lower side, which is proper. Hence requested to dismiss the Appeal’s.

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

6. While dealing with the issue of income of both the deceased, the Tribunal has observed that the deceased were doing farm business. The 7/12 extract is produced on record, shows that they were taking crop of rice. The witness PW-2-Mohanlal Shah, has stated that, he was purchasing rice of Rs.1,00,000/- to Rs.1,50,000/- from the deceased. The Tribunal further observed that, PW-3-Sandeep Mongal and PW-4-Jayanta Patil were purchasing 10 liter milk from the deceased @ Rs.60/- per liter. PW-5-Tukaram Divekar has stated that deceased were doing the business of milates and vegetables. PW-6-Laxman Divekar has stated that, the deceased had seven cattle's and he was purchasing cow dung @ Rs.600/- per bullock-cart from the deceased. It has come in the evidence of PW-6 that, the deceased were doing business of bricklin. PW-7-Subhash Divte Assistant Animal Husbandry and Development Officer, has stated that, the

deceased had three cow, 4 baffellow and 7 goats. Considering the evidence on record the Tribunal has considered yearly income of both the deceased at Rs.3,35,000/- each. I do not find infirmity in it.

7. In my view, the witnesses examined by the Claimant's were independent witnesses. The witness No.7- Assistant Animal Husbandry and Development Officer is Government Officer, he has stated that, the deceased had cattles and goats. The other witnesses have stated that they were purchasing milk from the deceased. The witness has stated he was purchasing rice from the deceased. Hence, I do not find merit in the contention of the learned counsel for the Appellant that, income of the deceased are considered on higher side. The Tribunal has passed pay and recover order on the basis that, at the time of accident the driver of the offending vehicle was not holding effective and valid driving license. I do not find infirmity in it.

8. In my view, it is settled principal of law, if there is breach of Terms and Conditions of the Insurance Policy, the Insurance Company shall pay the compensation to the Claimant's

and recover it from the owner of the vehicle, as at the time of accident the offending vehicle was insured with the Appellant-Insurance Company. Moreover, the owner of the offending vehicle has not challenged the impugned order.

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

ORDER

(i) The Appeals are dismissed.

(ii) The Respondent's/Claimant's are permitted to withdraw deposited amount alongwith accrued interest.

(iii) The statutory amount alongwith interest in both the Appeals be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Record and Proceedings in both the Appeals be sent back to the Tribunal.

(v) All pending Civil and Interim Applications in both the Appeals are disposed of.

(SHIVKUMAR DIGE, J.)