IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.8887 OF 2024
IN
FIRST APPEAL NO.325 OF 2020

Sangeeta Santosh Dhotre & Ors. …. Applicants

V/s.

Sachin Balasahed Nikam & Anr. …. Respondents

Mr.Prasad Avhad i/b Mr.Kuldeep Nikam, for the Applicant.
Mr.Rajesh Kanojia i/b Res Juris, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 10th MAY 2024

P.C:-

. Not on board. Taken on board.

2. By this Application, the Applicants are seeking modification of the judgment passed by this Court dated 23rd January 2024.

3. It is contention of the learned counsel for the Applicants that, this Court while passing the order has allowed the Appeal of the Claimants and directed the Respondent No.2-Insurance Company to pay the compensation and recover it from

the owner of the vehicle, but this is not appearing in the order.

4. The learned counsel for the Respondent No.2-Insurance Company submitted that at the time of the accident, the driver of the offending vehicle was not holding effective and valid driving license, the said fact was proved before the Tribunal. The Clerk from RTO Office was examined to prove the defence. There was breach of Terms and Conditions of the Insurance Policy. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it.

5. I have heard both learned counsel.

6. In my view, in the order, this Court has mentioned that Insurance Company is liable to pay compensation amount to the claimants and recover it from the owner of the vehicle.

7. In view of above, the entire judgment is modified as follows :-

> "**1.** The issue involved in this appeal is exoneration of Insurance Company.
>
> **2.** It is contention of learned counsel for the appellants that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence. There was breach of terms and

conditions of the insurance policy. The Tribunal should have directed the Insurance Company to pay the compensation and recover it from owner of offending vehicle but instead of that the Tribunal has exonerated the Insurance Company which is not proper, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.2 / Insurance Company that while passing the order the Tribunal has considered all the aspects and on that basis order is passed and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Sangli (For short "**the Tribunal**"). It is contention of learned counsel for the appellant that there was breach of terms and conditions of the insurance policy. The Tribunal should have passed pay and recover order. In my view, it is settled principle of law that if driver of offending vehicle was not holding effective and valid driving licence at the time of accident and there was breach of terms and conditions of insurance policy, the Insurance Company is liable to pay the compensation amount to the claimants and recover it from the owner of the vehicle but the Tribunal has not considered this fact and has exonerated Insurance Company which is erroneous and I pass following Order:

ORDER

(i) The Appeal is allowed.

(ii) The Respondent No.2-Insurance Company shall deposit the compensation amount along with accrued interest thereon as fixed by the Tribunal within six weeks after receipt of this order.

(iii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(iv) The Respondent No.2-Insurance Company is at liberty to recover deposited amount along with accrued interest thereon from owner of the vehicle i.e. Respondent no.1.

(v) All pending Applications are disposed of.

5. The appeal is disposed of."

8. The original Judgment be corrected accordingly.

(SHIVKUMAR DIGE, J.)