IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 208 OF 2021

	The Manager, HDFC ERGO General Insurance Company Ltd. In front of Basant Bahar Talkies, Kolhapur Policy Number- 2316200073496905034 Policy Period – 20-03-2013 to 19-03-2014	)))))	Appellant
	Versus		
1	Smt. Shirmabai Vithoba More (Died during pendency of claim petition hence petition is abated against her) R/o. Ramling Fhata, Jamdar Mala, Tal – Hatkanangle, Dist – Kolhapur	)))))	
2	Kumar Akash Ramchandra More Age – 20 years, Occu - Education, R/o. - As above	)))	
3	Kumari Puja Ramchandra More Age – 17 years, Occu – Education R/o. - As above	)))	
4	Managing Director / concern person ASIP Private Ltd., 2nd Floor, BLDG Gowade Layout, Turunur Road, Chitradurg, Karnataka Pin – 577501 Summons may be served on Manager Supreme Company, Hatkanangle, Tal. Hatkanangle, Dist - Kolhapur	))))))))	
5	Shri Mahamad Azaruddin Mahamad Ataullah Khan Age – Major, Occu – Driver, A/p. Govandi, Shivajinagar, Plot No.43 R 19 Mumbai Summons may be served on Manager Supreme Company, Hatkanangle, Tal. Hatkanangle, Dist – Kolhapur	)))))))	Respondents

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Mr. Abhijit P. Kulkarni a/w. Mr. Abhishek Roy, Mr. Gourav Shahane and Mr. Shreyas Zarkar, Advocates for the Appellant.
Mr. Avesh Ghadge i/b.Mr. Akshay Kulkarni Advocate for Respondent Nos. 2 and 3.

CORAM : SHIVKUMAR DIGE, J.
DATED : 20th JANUARY, 2025.

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 policy of offending vehicle is produced before the Tribunal was fake and forged policy. The appellant/ Insurance Company had proved the said fact before the Tribunal but the Tribunal has passed pay and recover order, which is erroneous. The Tribunal should have exonerated the Insurance Company, from passing compensation when Insurance policy was fake and forged, hence requested to allow the appeal.

3. It is contention of respondent Nos. 2 and 3 / claimants that the Tribunal has passed well reasoned order. No interference is required in it, hence requested to dismiss the appeal. Learned counsel further submitted that consortium amount is awarded on lower side it be awarded properly.

4. I have heard both the learned counsel. Perused Judgment and Order passed by Motor Accident Claims Tribunal, Kolhapur (for short “the Tribunal”). While dealing with the issue of fake policy, the Tribunal has observed that from the admissions given by the witness of opponent No.2-Insurance Company / appellant, it revealed that the insurance company appointed agents for collection of the premium of insurance policy. The said agents fill up the form of customers and accept premium from customer giving them cover note. The responsibility admitted by agents is ultimately responsibility of the insurance company. From the record it shows that the opponent No.2 i.e. appellant filed complaint against unknown person for the said forged policy. They have not issued any notice to the owner and also not lodged complaint against him. The opponent No.3 i.e. owner of the offending vehicle failed to bring on record how the said policy came into possession of the claimant. Nothing brought by the opponent No.2 /Insurance company on record to show that the insurance policy in question is forged one. On the contrary, from the admission given by the witness of opponent No.2 it reveals that he has not searched the policy as per the bar code. So it cannot be said that the said policy filed by the claimant is forged one. In such circumstances, it indicates that the offending vehicle is validly insured at the time of accident. Learned Tribunal further observed that there is no dispute that the offending vehicle was not insured. It was validly insured at the time of incident vide Exhibit-31 is the cover note of the insurance policy so there is no substance in the objection taken by opponent No.2 for exhibiting the said insurance policy. Considering the evidence on record the Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, the Tribunal has passed well reasoned order as the appellant / Insurance company failed to prove that policy which was produced before the Tribunal was fake and forged.

While awarding compensation the Tribunal has awarded Rs.30,000/- for consortium amount. As per view of Hon'ble Apex Court in the case ***of Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are two claimants. Total comes to Rs.1,32,000/-. If amount of Rs.30,000/- awarded by the Tribunal is deducted from it, it comes to Rs.1,02,000/-. The claimants are entitled for this amount.

5. It is contention of learned counsel for respondent Nos. 2 and 3 that while awarding compensation, the Tribunal has applied multiplier to the deducted amount which is erroneous. The correction is required to be done in the calculations done by the Tribunal. It is contention of learned counsel for the appellant-Insurance company that for making corrections in the calculations, the matter be remanded back to the Tribunal and at appellate stage the said calculations cannot be corrected.

In my view, for arithmetical errors it is not necessary to remand back the matter and this Court at appellate stage can correct the arithmetical errors. Therefore, I do not find contention in the submission of the learned counsel for the appellant-Insurance company that matter is required to be remanded back for correcting errors.

6. Considering the above calculations, the claimants are entitled for following compensation.

Particulars	**Rs.**	**Amount**
Income	Rs.	6,000/-
40% Future Prospects	Rs.	2,400/-
Annual Income	Rs.	1,00,800/-
1/3rd deduction for personal expenditure	Rs.	67,200/-
Total X Multiplier (14)	Rs.	**9,40,800/-**
Consortium (Rs. 48,000 X 2)	Rs.	96,000/-
Loss of Estate	Rs.	18,000/-
Funeral Expenses	Rs.	18,000/-
Total	Rs.	**10,72,800/-**
Compensation awarded by Tribunal	Rs.	5,00,400/-
Total Enhanced amount	Rs.	5,72,400/-

Considering the above calculations, claimants are entitled for enhanced amount of Rs. 5,72,400/-.

ORDER

i. The appeal is dismissed.

ii. The respondent Nos. 2 and 3 / claimants are entitled for enhanced amount of Rs.5,72,400/- @7% interest per annum from 1st November, 2007 till realisation of amount.

iii. The Insurance Company shall deposit enhanced amount along with interest within six weeks.

iv. The appellant/Insurance Company is at liberty to recover the compensation amount as well as enhanced amount along with accrued interest thereon from the owner of the offending vehicle.

v. The claimants shall pay deficit court fees on the enhanced amount as per rule.

vi. Statutory amount along with accrued interest be transferred to the Tribunal. Parties are at liberty to withdraw it as per rule.

vii. R & P be sent back to the Tribunal.

viii. All pending applications, if any, also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2025.02.07 11:35:35 +0700