IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1221 OF 2023

HDFC ERGO General Insurance Co. Ltd., }
Vichare Complex, Jems Stone Building, }
Near S.T. Stand, Kolhapur. } **...Appellant**

Versus

1. Smt.Nisha Milind Kamble }
Age-31 Years, Occ: Household, }
R/o.Ganeshnagar, Shirol, Taluka-Shirol, }
District-Kolhapur. }

2. Kumari.Sakshi Milind Kamble }
Age-14 years, Occ: Education }

3. Kumari.Samiksha Milind Kamble }
Age-12 years, Occ: Education }

4. Kumari.Sanika @ Rakhi Milind Kamble }
Age-9 years, Occ: Education }

5. Kumari.Madhura Milind Kamble }
Age-5 months, Occ: Nil }
}
All R/o.Ganeshnagar, Shirol, Taluka-Shirol, }
District-Kolhapur. }
Respondent Nos.2 to 5 are minors, hence, }
Respondent No.1 mother is appointed as }
natural guardian }

6. Shri.Yuvraj Nitin Suryawanshi }
Age-25 Years, Occ: Business }
R/at 385, Burud Galli, Sangli, Taluka-Miraj, }
District-Sangli }

Mr.Abhijit P. Kulkarni a/w Ms.Sweta Shah, for the Appellant.
Mr.Avesh Ghadge i/b Mr.Akshay Kulkarni, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JULY 2025

ORAL JUDGMENT :

. The issue involved in this Appeal is, the Insurance Policy of offending vehicle was forged and fake policy.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, policy produced on record of the offending vehicle was forged and fake policy. To prove it, the Assistant Manager of the Insurance Company was examined, but the Tribunal has not considered evidence produced on record and has passed pay and recover order, which is erroneous. When the Insurance Policy produced on record was fake, the Insurance Company is not liable to pay compensation. The Tribunal should have exonerated the Insurance Company from payment of

compensation. The learned counsel further submitted that, the Tribunal has awarded interest @ 9% per annum on compensation amount, it is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Claimant that, the Agent through whom the Insurance Policy was taken was not examined by the Insurance Company. The Policy had bar-code and the Insurance Company had not verified the said bar code. The Tribunal has passed well reasoned order, no interference is required in it. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side and requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Jaysingpur.

5. To prove the defence that, the Insurance policy of the offending vehicle was fake, the Appellant Insurance Company has examined Mr.Bambulkar, Assistant Manager of Insurance

Company. He has stated that, he had verified the policy on the basis of the policy number, vehicle number, cover note, chassis number, engine number and customer number. He had also verified the data about policy on the basis of All India Level, which is maintained centralized at their Central Office. He further stated that, he had verified that data personally and he had taken out the printouts of the data vide it is at Exhibit-41. After collecting the data he found that, policy filed by the Claimants is numbered and period of insurance is forged one. He has further stated that, the Insurance Company filed complaint with Jaysingpur Police Station against unknown person for forging Insurance Policy.

6. In cross-examination, he admits that, company appoints agents for collection of the premium of Insurance Policy and one Mr.Niraj Shah was appointed by Insurance Company as an agent. He Admits that, the responsibility accepted by the agent is ultimately responsibility of the Insurance Company. He admits that, bar code is available for the search of the policy. There is bar code on the copy of the policy which was filed with

the Claim Petition. He admits that, he has not done search as per bar code. He admits that, the Appellant-Insurance Company had not issued notice to owner of the offending vehicle regarding forged policy. He admits that, the Insurance Company has not examined Mr.Niraj Shah, agent of the Insurance Company.

7. While dealing with the issue of fake insurance policy, considering evidence on record, the Tribunal has observed that, it cannot be said that policy filed by Claimants is forged one, and at the time of the accident, offending vehicle was not insured with the Insurance Company. The Tribunal has observed that, the policy was taken by the owner of the offending vehicle through Shri.Niraj Shah, agent of the Insurance Company but he was not examined. I do not find infirmity in the order of the Tribunal.

8. In my view, it appears from record that, the policy was taken through agent Mr.Niraj Shah, but he was not examined by the Insurance Company to prove that it was fake policy. Moreover, the Tribunal has passed pay and recover order. Hence, I do not find merit, in the contention that, the policy produced

on record was fake policy. The Tribunal has awarded lump-sum consortium amount to only one Claimant of Rs.40,000/-. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram[1],*** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are five Claimants. It comes to Rs.2,76,000/-, if amount of Rs.40,000/- is deducted from it comes to Rs.2,36,000/-. The Claimants are entitled for this amount.

9. The Tribunal has awarded 9% interest on compensation amount, it is on higher side, I am considering it at 7.5%.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Claimant's are entitled for interest @ 7.5% per annum on compensation amount instead of 9% awarded by the Tribunal from the date of the filing of

1 2018 ACJ 2782 (SC)

the Claim Petition till realization of the amount.

(iii) The Appellant Insurance-Company is permitted to withdraw excess interest amount from the deposited amount.

(iv) The Respondents-Claimants are entitled for enhanced amount of Rs.2,36,000/- @ 7.5% per month from 1st November 2017 till realization of the amount.

(v) The Appellant-Insurance Company shall deposit enhanced amount with interest within four weeks after receipt of this order.

(vi) The Respondents-Claimants are permitted to withdraw deposited amount.

(vii) The Claimants shall pay deficit Court Fees on enhanced amount, as per Rules.

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

(ix) Record and Proceedings be sent back to the Tribunal.

(x) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)