IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

INTERIM APPLICATION NO. 1445 OF 2025
IN
FIRST APPEAL NO. 3744 OF 2021

FFCO-Tokio General Insurance Co. Ltd.
Thr. its Authorized Representative
Amol Aurnrao Bidwai ….Applicant/Appellant

Versus

Smt. Anusayabai Balaji Waghmode & Ors. ….Respondents

Mr. Rajesh Kanojia, Advocate for the Applicant/Appellant.
Ms. Ketki Gokhale i/b Mr. Yogesh Pande, Advocate for the Respondent Nos.1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th JUNE, 2025.

P.C. :

1. The issue involved in this Appeal is pay and recover order passed by the Motor Accident Claims Tribunal (for short "The Tribunal"), Pune.

2. It is contention of learned counsel for the Appellant that the offending motorcycle was driven by minor who was 16 years of

old, there was breach of terms and conditions of Insurance policy, the liability should have been fixed on the owner of the offending motorcycle, but the Tribunal has passed pay and recovery order, which is erroneous. Learned counsel further submits that the Tribunal has awarded future prospect at 50% it should be 40% as deceased was in private business. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondents – Claimants that at the time of accident the offending vehicle was insured with the Appellant – Insurance Company as there was breach on insurance policy. The Appellant is liable to pay the compensation to the Claimants and recover it from the insurer. The order passed by the Tribunal is well reasoned, and no interference is requirement and requested to dismiss the Appeal.

4. I have both the learned counsel perused the Judgment and order passed by the Tribunal. Admittedly, at the time of accident the offending motorcycle was driven by minor. The offending vehicle was insured with the Appellant – Insurance Company. There was breach of terms and condition of insurance policy. While passing pay and recover order the Tribunal has observed that as there is breach

of terms and insurance policy and the offending motorcycle was insured with the Appellant. Hence, Appellant – Insurance Company shall pay the compensation to the Claimants and recover from the insurer, i.e. owner of the vehicle. I do not find any infirmity in it. In my view, it is settled law that if there is breach of terms and conditions of insurance policy. The Insurance Company shall pay the compensation to claimant and recover it from the Insurer.

5. The Tribunal has awarded 50% future prospects. The deceased was doing private business he was not permanent employee. Hence, the Claimants are entitled for 40% for future prospects. As per 10% excess future prospect amount it comes to Rs. 1,37,521/-. The Appellant – Insurance Company entitled for this amount.

6. The learned counsel for Appellant submits that interest is awarded on compensation at 8% it is on higher side. It should be reduced. The Tribunal has awarded the interest at 8%. The total compensation amount is more than 59 lakh. Hence, I considering interest @ 7.5%. In view of above, I pass following order.

ORDER

(i) The Appeal is partly allowed.

(ii) The Appellant -Insurance Company is permitted to withdraw Rs.1.37,521/- from deposited amount along with accrued interest thereon.

(iv) The Appellant – Insurance Company permitted to withdraw 0.5% excess interest amount interest from the deposited amount. The Respondent/Claimants are permitted to withdraw balance amount.

(v) Appellant - Insurance Company is permitted to recover the compensation amount from the owner of the offending vehicle as directed by the Tribunal.

(vi) The delay of 1 year and 108 days for filing the Appeal is condoned.

(vi) Appeal be registered for statistical purpose.

(vii) R & P is sent back to the tribunal. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per Rules.

(viii) All pending applications are disposed of.

(SHIVKUMAR DIGE, J.)