IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 364 OF 2024

	Reliance General Ins. Co. Ltd. Having Their Office : 4th Floor, Chintamani Avenue, Off. Western Express Highway, Goregaon (E), Mumbai	…	Appellant
	Versus		
1	Nanda Krishna Gosavi (Deleted) Aged abour 43 years, Widow of the deceased		
2	Mr. Yogesh Krishna Gosavi Aged about 28 years, Son of Deceased		
3	Miss Komal Krishna Gosavi Aged about 24 years, Daughter of deceased R/o. Building No. 18, Room No. 16, New Mahim Police Colony, Near S.L.Raheja Hospital, Mahim, Mumbai – 400 016		
4	M/s. MD Mustafa Bashir Ahmed Shaikh Having their office at 513, Datta Mandir Shejari, Vibhag A, Shivadi Koliwada Road, Uttar Shivadi, Mumbai Maharashtra – 400 015	…	Respondents

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Mr. Akshay Kulkarni a/w. Mr. Avesh Ghadge, Advocates for the Applicants.
Mr. Vasant N. More, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.
DATED : 3rd JANUARY, 2025.

ORAL JUDGMENT :

1. The issues involved in this appeal are, rider of the offending motorcycle was holding learner's licence and the claimants have availed departmental benefits of Rs.5 lakhs from the department of deceased and from other insurance policy the claimants have received Rs.25 lakhs.

2. It is contention of learned counsel for the appellant- Insurance company that the rider of offending motorcycle was holding learner's licence and as per the settled law he was not accompanied by pillion rider having valid driving licence. Learned counsel further submitted that claimants have received compensation amount from department of the deceased as well as from other insurance policy hence the claimants are not entitled for compensation from appellant Insurance company. But these facts are not considered by the Tribunal hence requested to allow the appeal.

3. It is contention of learned counsel for respondents / claimants that the deceased was police naik and benefits received from the department are different than the compensation from accident claim. Learned counsel further submitted that the appellant-Insurance company failed to prove that pillion rider was not holding valid driving licence and there was breach of terms and conditions of insurance policy. The Tribunal has passed well reasoned order and no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal Tribunal, Pune (for short "the Tribunal"). It is claimants' case that on 04.01.2018 at around 8.15 p.m. to 8.45 p.m. when the deceased was walking on road at that time one motorcycle bearing No. MH-01-BZ-4452 dashed him. In that accident, he fell down and sustained head injuries. He succumbed to injuries. While dealing with the issue of learner's licence, the Tribunal has observed that the appellant- Insurance company failed to prove that pillion rider Amir Khan was not holding valid driving licence. I do not find infirmity in it. To prove its defence, the appellants have examined DW-1 Sachin Nair, Manager of appellant- Insurance Company. He has stated that he has carried out investigation in respect of the accident and rider of offending motorcycle was holding learner's licence at the time of accident. In cross examination he admitted that Aamir Khan was pillion rider he does not know if he had valid driving licence. The appellant has examined DW-2 Suresh Raut, Insurance investigator. He has stated that at the time of accident the rider of offending motorcycle was holding learner's licence. He has stated the same facts as stated by DW-1. In cross examination, he admitted that he does not know whether pillion rider had driving licence or not. Considering evidence of these two witnesses, it appears that they investigated about the licence of rider of motorcycle and not the pillion rider so the appellant failed to prove pillion rider had valid driving licence or not. As per the view of Hon'ble Apex Court in the case of ***National***

Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 of 2019, if any plea is taken by any party it is burden on the said party to prove it by substantive evidence. Hence, I do not see merit in the contention that pillion rider was not having valid driving licence.

5. It is contention of learned counsel for the appellant that Tribunal has considered salary of the deceased with allowances. It is erroneous. In my view, it is settled law that allowances are part of the salary, hence income of the deceased considered by the Tribunal is proper.

It is contention of learned counsel for the appellant that the claimants have received benefits from department of the deceased and amounts from other insurance policy hence they are not entitled for compensation under Motor Vehicles Act (M.V.Act). In my view, it is settled principle of law that getting benefits under other policies cannot be a taboo to the claimants to get compensation under provisions of Motor Vehicles Act. The Hon'ble Apex Court in the case of ***Sebastiani Lakra and Ors. Vs. National Insurance Co. Ltd. and Anr., 2019 ACJ 34 (SC)*** has observed that getting the benefits under other policies cannot be deprived the claimants from getting the compensation. In view of above, I do not see merit in the appeal and I pass following order.

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

ORDER

i. The appeal is dismissed.

ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

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

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

(SHIVKUMAR DIGE, J.)