IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1900 OF 2024

	General Manager Royal Sundaram Alliance Insurance Company Limited. Sundaram Towers, 46, Whites Road, Roya Petha, Chennai	…	Appellant
	Versus		
1	Saidabi Iqbal Shah Age : 57 years, Occupation : Household		
2	Alamgir Iqbal Shah Age : 38 years, Occupation : Labour		
3	Aslam Iqbal Shah Age : 35 years, Occupation : Labour		
4	Najmin Iqbal Shah Age : 30 years, Occupation : Household All R/o. : House No : 3074 Sanjar Apartment, Motha Rajwada Bhadrakali, Old Nashik, Nashik		
5	Madhukar Shrimant Sawant Age : Major, Occupation : Vehicle Owner R/o. Dasur, A/P Bhondale Malshiras, Dist : Solapur	…	Respondents

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Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Rajan S. Pawar a/w. Ms. Rupa Singh, Advocate for Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.
DATED : 9th JUNE, 2025.

ORAL JUDGMENT :

1. The issue involved in this appeal is insurance policy of the offending vehicle was fake and incident occurred due to sole negligence of the deceased.

2. It is contention of learned counsel for the appellant that accident occurred when deceased was crossing the road. The accident occurred due to sole negligence of the deceased. Learned counsel further submitted that the policy produced on record of the offending vehicle was fake policy. The Insurance company has examined the witness to prove the said fact but his evidence has not been considered by the Tribunal, hence requested to allow the appeal.

3. It is contention of learned counsel for the claimant that deceased was walking along side the road at that time the drive of offending car gave dash to him. The FIR was registered against the car driver. Learned counsel further submitted that car driver did not step into the witness box to prove the negligence of the deceased. Learned counsel further submitted that the Tribunal has observed that no evidence is produced on record by the Insurance Company to prove that the insurance policy produced on record was fake. The Tribunal has passed well reasoned order. No interference is required in it, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and order passed by Motor Accident Claims Tribunal, Nashik (for short "the

Tribunal"). It is claimant's case that on 29.11.2017 the deceased was walking along a rough road in front of Bhagwanpur police chowki from Dwarka towards Amarbham side at that time a car being No. MH 45 H 9905 came in high speed in rash and negligent matter and gave dash to him. Due to said dash, he sustained grievous injuries and succumbed to injuries. The offence was registered against the car driver. To prove the defence that policy of offending vehicle was fake, the insurance company has examined Anil Pawar, PW-1. He has stated that insurance policy No. VPT0022157000100 was issued to opponent No.1 for his car being No.MH 45/H 9905 for the period of 30.12.2015 to 29.12.2016 (Exhibit-39). He has denied that policy No. VPT0022157000100 for the period of 30.12.2016 to 29.12.2017 was issued by the company. In cross examination he admitted that if application is received in legal branch of their office, they make enquiry of the same. In this case they did not make any investigation about the insurance policy of offending vehicle. He further admitted that insurer Madhukar Sawant is their old customer. They did not ask insurance policy from him. A copy of policy produced on record i.e. Exhibit-39. He further admitted that they did not file complaint to police station that insurance policy produced in this case is fake. The police station had given them a letter and complaint was disposed of. Thereafter also they failed to file complaint. The Tribunal has discarded the contention of the fake insurance policy on the ground that no evidence is produced on record to show that insurance policy of offending vehicle was verified. The Insurance Company has not recorded statement of owner of offending vehicle and the evidence of DW-1 cannot cannot be relied on. I do not find infirmity in it. In my view, it is settled principle of law if any specific defence is taken by any party, it has to be proved by cogent evidence. In the present case the Insurance Company has taken the defence of fake insurance policy but no evidence is produced on record in that regard hence I do not find infirmity in the order passed by the Tribunal. In case of issue of negligence of the deceased, admittedly car driver has not been examined by the Insurance Company to prove the negligence of the deceased. As accident was occurred on road hence, I am considering 10% contributory negligence of the deceased. The Tribunal has awarded total compensation amount of Rs.4,33,000/- if 10% of it is deducted i.e. Rs.43,00,300/- it comes to Rs.3,89,700/-. The claimants are entitled for this amount.

5. In view of above, I pass following order:

ORDER

i. The Appeal is partly allowed.

ii. The respondent Nos.1 to 4/ claimants are entitled for compensation amount of Rs. Rs.3,89,700/- @7.5% interest p.a. from the date of filing application till realisation of the amount.

iii. The appellant is permitted to withdraw excess amount along with accrued interest thereon.

iv. The statutory amount be transferred to the Tribunal. Parties are at liberty to withdraw it as per rules.

6. The appeal is disposed of. Pending applications, if any, are also disposed off.

(SHIVKUMAR DIGE, J.)