IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2014 of 2024

	Cholamandalm MS General Ins. Co. Ltd., 2nd Floor, Dastor House, Above Union Bank of India, Perin Nariman Street, Fort, Mumbai – 400001. (Insurer of Motor Container bearing Registration No.GJ-06-VV-7544) versus	Appellant (Original Res. No.2)
1	Manisha Pramod Mistry, Age :- 34 Years, Occupation : Housewife (Widow of the deceased)	
2	Mangla Subhash Mistry, Age : 64 years, Occupation : Housewife (Mother of the deceased)	
3	Gaurav Pramod Mistry, Age :14 Years, Occu : Education (Minor Son of the deceased) Res. No.3 is minor hence by and through Natural guardian i.e. mother Res.No.1.	
4	Subhash Laxman Mistry, Age 68 years, Occu Nil, Father of the deceased Res.Nos.1 to 3 are residing at Padwal Chawl, Near Arun Mandal Lokmanya Nagar, Pada No.2, Thane.	
5	Mainuddin N. Khan, R/at. Patel Plaza, Room No.03-204, Sector No.08 E, Kalamboli Node, Panvel, District :- Raigad 410218. Owner of motor towing Van Bearing registration No.MH-46-BE-5871	Respondents (Respondent Nos.1 to 4 are Original Claimants and Respondent No.5 is original Respondent No.1)

SHUBHADA SHANKAR KADAM

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Mr. Sarthak S. Diwan along with Mr. Aditya Ghadge, Advocate for the Appellant-Insurance Company.
Ms. Rina Kundu, Advocate for Respondent Nos.1 to 4/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th JULY, 2025.

Judgment :

1. This appeal is preferred by the Appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai, (for short "the Tribunal").

2. It is contention of learned counsel for the appellant-Insurance Company that at the time of the accident, the driver of the offending vehicle was holding license of Light Motor Vehicle (L.M.V.) but he was driving heavy goods vehicle with unladen weight of 8380 kgs. There was breach of terms and conditions of the Insurance Policy. The Tribunal should have exonerated the Insurance Company from paying the liability but the Tribunal has passed pay and recover order, which is erroneous. He further submitted that the monthly income of the deceased is considered on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 4/claimants that it is settled principle of law that if the driver of the offending vehicle holds L.M.V license and he was driving the transport vehicle, the Insurance Company is liable to pay the compensation. In the

present case, the offending vehicle was more than 8000 kilogram, hence, the Tribunal has passed pay and recover order, which is proper as there was breach of terms and conditions of Insurance Policy. Learned counsel further submitted that the deceased was working in FlipKart Company and was getting salary of Rs.17,000/- per month. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. While dealing with the issue of driving license, the Tribunal has observed that, at the time of accident, the driver of the offending vehicle was holding driving license of non-transport category. He has "LMV - TR" category license and he did not have driving license of Heavy Motor Vehicle Motor "HMV-TR" category on the date of accident. The Tribunal further observed that the weight of the offending vehicle was 8380 kilograms. On that ground, the Tribunal has observed that there was breach of terms of Insurance Policy and has passed pay and recovery order. I do not find infirmity in it.

6. In my view, the Hon'ble Apex Court in ***Mukund Dewangan (S) v. Oriental Insurance Company Limited 2017 AIR SC 3668*** has observed that the person having LMV can drive transport vehicle which is below 7000 kilogram and the Insurance Company is liable to pay

compensation. In the present case, the weight of the offending vehicle was more than 8000 kilograms, hence, the Tribunal has passed pay and recover order, which is proper.

7. It is claimants' case that the deceased was working as driver in M/s. Flip Card Hub Agency at Louiswadi, Thane and getting salary of Rs.17,000/- per month. To prove the income of the deceased, the claimants have examined PW2-Mr.Hanuman. He has stated that the deceased was driver on his tempo and he was paying salary of Rs.17,000/- per month to the deceased. The salary certificate is at Exhibit-27. In cross-examination, he has admitted that he has no documents of service and payment to the deceased.

8. While dealing with the issue of income of the deceased, the Tribunal has observed that the deceased was getting salary of Rs.17,000/- per month and he was maintaining family of four persons. On that ground the Tribunal has considered monthly income of the deceased at Rs.17,000/- per month. I do not find infirmity in it.

9. In view of above, the appeal is devoid of merit and I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

4. The appellant is at liberty to recover compensation amount with interest from the owner of the offending vehicle as observed by the Tribunal.

5. Record and proceedings be sent to the Tribunal.

10. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)