

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 742 OF 2003**

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| 1. United India Insurance Co. Ltd.,
City Branch, First Floor,
Chamber of Commerce Building,
P. O. Sangli, Dist. Sangli | ...Appellant
(Ori. Opp. No. 2.) |
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Versus

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| 1. Smt. Ranjana Ramesh Mohire,
age 47, Occu. Household | ...Respondent No. 1 |
| 2. Krishnali Ramesh Mohire,
age 24, | ...Respondent No. 2 |
| 3. Prasad Ramesh Mohire,
Age – 18 Yrs.
All R/o Bank Of Maharashtra,
Ankur Housing Society,
Behind Employment Office, Ahemadanagar | ...Respondent No. 3
(Ori. Applicants) |
| 4. Mohamad Babulal Maner, Occu. Business
R/o Mangalwarpeth, Jain Galli,
Miraj, Dist. Sangli | ..Respondent No. 4
(Ori. Opp. No. 1) |
| 5. Subrao Pandurang Kadam
Occu. Agriculturist, Irali, Kadamwadi,
Tal. Kawathe Mahankal Dist. Sangli | ...Respondent No. 5
(Ori. Opp. No. 3) |

Mr. Shrikrishna Dandge, Advocate for the Appellant.

Ms. Druti Datar, Advocate for the Respondent Nos. 1 to 3. (through VC)

CORAM : ASHWIN D. BHOBE, J.

DATE : 7th October, 2026.

Oral Judgement :-

1. Heard, Mr. Shrikrishna Dandge, learned Advocate for the Appellant and Ms. Druti Datar, learned Advocate for Respondent Nos. 1 to 3.

2. Mr. Shrikrishna Dandge, learned Advocate for the Appellant, submits that Respondent Nos. 4 and 5 have been duly served in this Appeal and even an Advocate had appeared for Respondent Nos. 4 and 5. He states that this fact is recorded in the Roznama of the First Appeal. None appears on behalf of Respondent Nos. 4 and 5, either in person or via VC mode.

3. This First Appeal is of the year 2003 and is, as such, in the list of “prioritized cases”. Mr. Shrikrishna Dandge and Ms. Druti Datar request for taking up this matter.

4. Appellant (Opponent No. 2), i.e. the Insurance Company, is before this Court by this First Appeal in respect of the Judgment and Award dated 26.07.2002, passed by the Motor Accident Claims Tribunal, Sangli (“the Tribunal”), in Motor Accident Claim Petition No. 187 of 1994 (“M.A.C.T. No. 187 of 1994”), which held Respondent No.

4 (Opponent No. 1) and the Appellant jointly and severally liable to pay Rs. 8,39,000/- with interest at 9 per cent.

5. Mr. Shrikrishna Dandge, learned Advocate for the Appellant, submits that the Appellants do not challenge the compensation awarded to the Respondent Nos. 1 to 3 ("Claimant"). He submits that the challenge in this Appeal is limited to fixing the liability to pay the awarded compensation on the Respondent Nos. 4 and 5. The Judgment and Award dated 26.07.2002, passed by the Tribunal, in M.A.C.T. No. 187 of 1994, to the extent of the challenge as submitted by Mr. Shrikrishna Dandge, is referred to as the "impugned Award".

6. The material facts relevant to this Appeal are that Respondent Nos. 1, 2 and 3 are the Claimants, i.e. the wife and children of Ramesh Krishnaji Monire (deceased). The deceased, while travelling to Kavathe-Mahankal, Miraj Road, on 05.02.1994 in an auto-rickshaw bearing No. MWE-126, met with an accident caused by an oncoming tractor bearing registration No. MH-10 8928. Due to the rash and negligent driving of the auto-rickshaw, the deceased succumbed to injuries sustained in the said accident. Respondent Nos. 1, 2 and 3 filed Motor Accident Claim Petition No. 187 of 1994, seeking compensation of Rs. 27,12,500/-.

7. Respondent No. 4 (Opponent No. 1), who is the owner of the auto-rickshaw, Appellant (Opponent No. 2), the insurance company that has insured the auto-rickshaw and Respondent No. 5 (Opponent No. 3), who is the owner of the tractor, contested the claim before the Tribunal.

8. By the impugned Award, the Tribunal partly allowed M.A.C.P. No. 187 of 1994, holding Respondent No. 4 and the Appellant jointly and severally liable to pay Rs. 8,39,000/- along with interest at 9 per cent. The Tribunal concluded that the accident occurred on account of the rash driving of the auto-rickshaw owned by the Respondent No. 4, in which the deceased was travelling.

9. Ms. Druti Datar, learned Advocate for Respondent Nos. 1 to 3, states that Respondent Nos. 1, 2 and 3 have accepted the impugned Award and have not further challenged it.

10. Mr. Shrikrishna Dandge, learned Advocate for the Appellant, has confined this Appeal and his submissions to the challenge to Issue No. 6 of the impugned Award. He submits that the auto-rickshaw in which the deceased was travelling, owned by Respondent No. 4, was driven by Deepak Bapu Waghmare, who did not hold a valid licence on the date

of the accident. As a result, the insurance policy was breached. He refers to the clause in the insurance policy (Exh-102). He submits that the records of M.A.C.P. No. 187 of 1994 show that the Tribunal summoned Deepak Bapu Waghmare. Upon receipt of the summons, Deepak Bapu Waghmare appeared before the Tribunal and submitted his pursis dated 26.04.2002, which the Tribunal took on record as Exh-No. 104. By referring to the pursis, he submits that Deepak Bapu Waghmare has categorically stated that on the date of the accident (05.02.1994), he did not possess a valid licence. He submits that once it was established that the driver of the auto-rickshaw did not hold a valid licence to drive, the Appellant- insurance company was absolved of indemnification and the liability to pay compensation arising out of the accident fell on Respondent No. 4. He therefore submits that the Tribunal's conclusions on Issue No. 6 are illegal, perverse and unsustainable in law.

11. Ms. Druti Datar, learned Advocate for the Respondent Nos. 1, 2 and 3 and Mr. Shrikrishna Dandge submit that the pursis at Exh-104 filed by Deepak Bapu Waghmare was taken on record in M.A.C.P. No. 187 of 1994, without any objection from the parties to that M.A.C.P. They further submit that Deepak Bapu Waghmare, the rickshaw driver, admitted that he did not possess a valid licence on the date of the accident (05.02.1994).

12. From the contentions urged by Mr. Shrikrishna Dandge, learned Advocate for the Appellant, the following point falls for consideration:

(i) Whether the Tribunal was right in holding that although the driver “Deepak Bapu Waghmare” of the rickshaw on 05.02.1994 did not hold a valid motor vehicle licence, the Appellant was liable to indemnify the Respondent No. 4, as “Deepak Bapu Waghmare” was not disqualified from holding or obtaining a driving licence on the date of the accident?

13. Perused record.

14. The clause in the Insurance policy (Exh-102) around which the controversy in this Appeal centres is reproduced verbatim:-

“Any person including insured Provided that a person driving hold an effective driving Licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also that the person holding an effective learner’s Licence may also drive the vehicle when not used for the transport of passengers at the time of the accident and that such a person satisfied the requirements of Rule 3 of the Central Motor Vehicles Rules, 1989.”

15. While answering issue no. 6, the Tribunal observed that the driver-“Deepak Bapu Waghmare”, did not hold a valid motor vehicle

licence to drive the auto-rickshaw on the date of the accident (05.02.1994). However, it interpreted the clause in the Insurance policy (Exh-102) to hold that since the driver-“Deepak Babu Waghmare”, was not disqualified from holding or obtaining a licence on that date, the insurance company was liable to indemnify the Respondent No.4.

16. Section 3 of the Motor Vehicle Act 1988 reads as follows:-

Section 3. Necessity for driving licence.—

(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorizing him to drive the vehicle; and no person shall so drive a transport vehicle [other than³[a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

(2) The conditions subject to which sub-section (1) shall not apply to a person receiving instructions in driving a motor vehicle shall be such as may be prescribed by the Central Government.

17. Section 5 of the Motor Vehicle Act 1988 reads as follows:-

Section 5. Responsibility of owners of motor vehicles for contravention of sections 3 and 4.—No owner or person in charge of a motor vehicle shall cause or permit any person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle.

18. Section 180 of the Motor Vehicle Act 1988 reads as follows :-

*“Section 180. Allowing unauthorised persons to drive vehicles.
—Whenever, being the owner or person in charge of a motor vehicle, causes, or permits, any other person who does not satisfy the provisions of section 3 or section 4 to drive the vehicle shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.”*

19. In the case at hand, the auto-rickshaw bearing No. MWE-126 was used to ply passengers for hire and reward. It was a transport vehicle. The driver, “Deepak Bapu Waghmare”, did not hold a valid and effective driving licence on the date of the accident. On these undisputed facts, the Respondent No. 4 - owner not only breached the terms of the policy but also violated Section 5 of the Motor Vehicles Act, 1988, by entrusting the auto-rickshaw to a person who did not hold a valid licence on the date of the accident. The Appellant-insurer is therefore not liable to indemnify the Respondent No. 4.

20. The conclusions and the findings of the Tribunal while answering issue no. 6 in the impugned Award are perverse and contrary to law, as such, set aside. In view of the above, this Appeal succeeds.

21. Mr. Shrikrishna Dandge, learned Advocate for the Appellant, submits that the entire amount awarded by the impugned Award has

been deposited before the Tribunal in M.A.C.P. No. 187 of 1994. On instructions from the Appellant, he states that the Appellant does not object to Respondent Nos. 1 to 3 (Claimants) withdrawing the entire amount. However, he submits that as the liability to pay the compensation now would be of Respondent No.4, the Appellant be permitted to recover the said amount from Respondent No. 4 under the principle of “Pay and Recover” by filing appropriate proceedings. The stand taken by the Appellant is fair.

22. Ms. Druti Datar, learned Advocate for Respondent Nos. 1, 2 and 3, submits that Respondent Nos. 1, 2 and 3 have withdrawn part of the amount deposited and that directions be issued to the Tribunal to permit Respondent Nos. 1, 2 and 3 to withdraw the balance amount, along with the interest accrued. Respondent Nos. 1, 2 and 3 are permitted to withdraw the amount lying deposited before the Tribunal in M.A.C.P. No. 187 of 1994, along with the accrued interest. Mr. Shrikrishna Dandge, learned Advocate for the Appellant, hereby gives no objection to the withdrawal of the amount on behalf of the Appellant.

23. The Hon’ble Supreme Court in *National Insurance Co. Ltd. v. Swaran Singh*¹, held that the Insurance Company is entitled to pay and

¹ (2004) 3 SCC 297
Arjun

recover.

24. In view of the above, this Appeal is partly allowed by modifying the impugned Award to the extent observed hereinabove. It is clarified that the compensation awarded to the Respondent Nos. 1, 2 and 3 remains unaltered. The Appellant, who has paid the compensation awarded in M.A.C.P No. 187 of 1994, is entitled to recover the said amount awarded by the impugned Award from Respondent No. 4 by filing appropriate proceedings in accordance with the law.

25. First Appeal No. 742 of 2003 disposed in the above terms.

26. Award be drawn accordingly.

(ASHWIN D. BHOBE, J.)

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