IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

48 FIRST APPEAL NO. 194 OF 1998

M/S NEW INDIA ASSURANCE CO.BR.DHULE
VERSUS
KUSUMBAI BAPU KHAIRNAR AND ORS
WITH
48 FIRST APPEAL NO. 195 OF 1998

M/S NEW INDIA ASSURANCE CO.BR.DHULE
VERSUS
LILABAI SHRIRAM PATIL AND ORS

...

Advocate for Appellants : Shri V N Upadhye
Advocate for Respondents 1 to 5 : Mr. A. S. Sawant

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CORAM : S. V. GANGAPURWALA, J.

DATE : 5th October, 2015

PER COURT :

1. Mr. Upadhye, the learned counsel submits that the respondent/claimants have filed applications for compensation on account of death of deceased, who were travelling on Moped Bajaj M-80. The tribunal partly allowed the claim applications. Aggrieved thereby, the insurance company has filed the present appeals.

2. Mr. Updahye, the learned counsel for the appellant, submits that the insurance company could not have been made liable to pay compensation amount. Inasmuch as the driver of the matador/pick up van was not holding a valid driving licence. He was holding

driving licence of light motor vehicle and the vehicle in question driven by him was a transport vehicle. Distinction is made in that regard. In the licence, there was no endorsement of a licence being for transport vehicle. In such circumstances, the insurance company could not have been made liable to pay compensation. The learned counsel relies on the judgment of the Apex Court in the case of **Oriental Insurance Co. Ltd. Vs. Angad Kol and others, reported in AIR 2009 SC 2151** and the judgment of the learned Single Judge of this Court in the case of **National Insurance Co. Ltd.Vs. Devnath M. Yadav, reported in 2014 AAC 2763 (Bom).** The learned counsel submits that even the tribunal has come to the conclusion that the driver of the said pick up van was not possessing licence to drive the transport vehicle. However, considered that to be a mere technicality, imposed liability on the insurance company.

3. The respondent owner, though served, is absent.

4. Mr.Sawant, the learned counsel for the claimants does not dispute that the driver of the pick up van was not holding valid driving licence i.e. was not having

licence to drive transport vehicle. However, even in such a case, order of pay and recover from the owner of the vehicle can be passed against the Insurance Company. The learned counsel relies on the judgment of the Apex Court in the case of **S. Ayyapan Vs. United India Insurance Co.Ltd.,** reported in **2013 (6) Mh.LJ.1.**

5. I have considered the submissions so also I have gone through the record.

6. Even the tribunal has come to the conclusion that the driver of the pick up van was not holding a valid driving licence to drive transport vehicle, however, considered the same to be mere technicality. The Apex Court, in case of **Oriental Insurance Co. Ltd.,** referred supra, has, observed that that though the person may hold licence to drive light motor vehicle, however, the same is not akin to holding licence to drive transport vehicle. Distinction between the two exists. The same view has also been considered by the learned Single judge of this Court in case of **National Insurance Co. Ltd.,** referred supra.

7. In light of that, it can be said that the driver of the pick up van was not holding valid driving

licence. However, in such a case, the order to pay first and recover from the owner of the vehicle can be passed against the Insurance Company as has been held by the Apex Court in case of **S.Ayyapan**, referred supra.

8. In the light of above, the judgment and awards passed by the tribunal are modified to the extent that original respondent No.1 Ashok Vyankat Mistri- driver and original respondent No.2 Ghananil Yashwant Salunke, owner of the vehicle, are jointly and severally liable to pay compensation as awarded by the tribunal to the claimants. However, the Insurance company shall pay the said amount to the claimants first and then recover it from original respondent No.1 Ashok Vyankat Mistri- driver and original respondent No.2 Ghananil Yashwant Salunke, owner of the vehicle.

9. The first appeals are accordingly allowed. No costs.

10. The claimants are allowed to withdraw the amount already deposited, as awarded by the tribunal and deposited by the Insurance company.

(S. V. GANGAPURWALA, J.)

JPC