**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,**
**BENCH AT AURANGABAD**

FIRST APPEAL STAMP NO.1811 OF 2015

Oriental Insurance Company Ltd.,
through its Branch Manager,
Jalna road, Beed,
Taluka and District Beed ..Appellant

Versus

1. Pandurang s/o Shankar More,
Age 40 years, Occu.Skilled
Labour, R/o Anandgaon
Taluka Majalgaon, Dist. Beed

2. Sharad s/o Pralhad Ughade,
Age 42 years, Occu. Business,
R/o Anandgaon
Taluka Majalgaon, Dist. Beed

Mr U.S. Malte, Advocate for appellant
Mr P.K. Ippar, Advocate h/f Mr S.J. Salunke, Advocate for respondent No.1 & 2

**CORAM : N.W. SAMBRE, J.**

**DATE : 23rd June 2015**

**PER COURT**

Heard Mr Malte, learned Counsel for appellant.

2. The Insurance Company has questioned the legality of the judgment delivered in M.A.C.P. No.131/2012 on 22nd August 2014 whereby the Insurance Company is directed to pay Rs.1,95,000/- jointly and severally to the claim including no fault liability with 6% interest p.a. Mr Malte for the appellant would urge that the accident in question was caused on 6th June 2007 when Baban Sonaji Wahvalkar, son of the claimants who was riding on a motorcycle met

with an accident with Ape-rickshaw bearing registration No.MH.44-A-6976 which came from opposite direction and gave dash to the motorcycle.

3. It is claimed that the Ape-rickshaw was driven in a rash and negligent manner owned owing to Baban sustaining injures who was subsequently shifted to Rural hospital, Majalgaon for treatment, however, he succumbed to his injuries.

4. The above referred accident then followed with a complaint with the Police Station registering into offence in Crime No.161/2007 for the offence punishable under Sections 279, 337, 338, 304-A of Indian Penal Code against the driver of ape-rickshaw

5. The claimants before the Tribunal, while bringing into action the claim for payment of compensation against the vehicle owner and the ape-rickshaw owner and also the Insurance Company have urged that Baban was taking education in I.T.I. The respondent No.1 (respondent No.2 herein) - Ape-rickshaw owner vide his written statement Exh.27 come out with a plea that the driver of the Ape-rickshaw was holding a valid licence and he did not give dash to the motorcycle. He further claimed that the compensation awarded be paid by the Insurance Company.

6. The respondent No.2, i.e. present appellant Insurance company filed its written statement at Exh.16 thereby denying its liability.

According to appellant, the Ape-rickshaw which shown to have been involved in the accident was planted. It is further claimed by them that bogus claim was brought into action. It is further claimed by them that deceased Baban was riding on motorcycle with two other persons and the driver of the motorcycle was not holding a valid licence. It is claimed that the accident was occurred due to rash and negligent driving of Baban. It is claimed that the appellant and the owner of motorcycle are not impleaded as parties. It is further claimed by them that there is breach of terms and conditions of policy as driver of offending vehicle i.e. Ape-rickshaw was not holding valid and effective driving licence.

7. Based on the claim put forth by the appellant, the Tribunal framed following issues and answered the same accordingly, which read thus :

| ISSUES | FINDINGS |
|---|---|
| 1. Do the claimants prove that Baban s/o Sonaji Wavalkar died in a motor vehicle accident occurred on 06.09.2007 at about 08.00 p.m. on Deola to Anandgaon road near Longaon, due to rash and negligent driving of Auto-rickshaw bearing No.MH/44-A-6976 by its driver ? | In affirmative |

| | | |
|---|---|---|
| 2. | Does respondent No.2 prove that driver of ape-rickshaw bearing No.MH/44-A-6976 was not holding valid and effective driving liccence ? | In affirmative |
| 3. | Whether the claimants are entitled to get compensation? If yes, to what extent and from whom ? | Yes, Rs.2,06,000/- (Inclusive of no fault liability) from Respondent No.1 |
| 4. | What order and Award ? | As per final order |

8. The Tribunal as stated herein-before ordered payment of compensation of Rs.1,95,000/- which is questioned by the appellant on the ground that the ape-rickshaw driver was not holding a valid and effective driving licence which fact was lost sight of by the Tribunal. The Tribunal in M.A.C.P. No.4 of 2008 filed by the legal representatives of deceased Baban, has directed respondent No.1 (respondent No.2 herein) to pay of compensation of Rs.2,06,000/- to the claimants, which order is subject matter of First Appeal No.803/2010 and the said appeal has already been admitted by this Court with a rider that the appellant herein shall deposit the entire claim amount.

9. Learned Counsel for the appellant would urge that based on the same line, the respondent No.1 – Pandurang who was pillion rider sought compensation against the ape-rickshaw owner and the Insurance Company through M.A.C.P. No.131/2012. Against the pillion

rider the claim was resisted on the same ground as is claimed by Mr Malte. According to him, the Tribunal has proceeded to award the same by its award dated 22nd August 2014 in M.A.C.P.No.131/2012, as such present first appeal.

10. Mr Malte would urge that the earlier judgment delivered in M.A.C.P.No.4/2008 on 30th November 2009 is lost sight of by the Tribunal while deciding the M.A.C.P.No.131/2012. He would urge that this Court should take judicial review in all set of facts so also fact that against the judgment delivered in M.A.C.P.No.4/2008, First Appeal No.803/2010 is already admitted. According to him, even though the substantial pleadings were not part of the M.A.C.P.No.131/2012, this Court should read out the findings recorded in M.A.C.P.No.4/2008 while deciding the present appeal. In addition to above, he has raised a ground that under Section 147 of the Motor Vehicles Act, a pillion rider cannot seek compensation unless the vehicle owner has paid additional premium qua covering the insurance of a pillion rider.

11. While opposing the above referred contentions, learned Counsel for the claimants has invited my attention to the defence raised by the Insurance Company before the Tribunal. According to him, neither the findings recorded in M.A.C.P.No.4/2008 nor the Officer from the Insurance Company was examined so as to establish the breach of policy or fundamental defects in the policy. He would further urge that the claim petition was rightly decided by the Tribunal ordering the appellant to pay the compensation. He prayed that the present appeal is liable to be rejected.

12. It is required to be noted that both the claim petitions i.e. M.A.C.P.No.4/2008 and 131/2012 are arising out the same accident which fact is not in dispute. The only difference is the Claim Petition No.4/2008 which was prior in point of time that that of M.A.C.P.No.131/2012 was decided by the Tribunal at Majalgaon whereas the one which is questioned in the appeal is decided at Ambejogai.

13. So far as the award which is questioned in the present appeal is concerned, the settled position of law is the burden is on the Insurance Company to prove the breach of policy, if any, which is required to be established to the satisfaction of the Tribunal so as to come over the liability of payment of compensation to the insured. In the present case, it is noticed that the appellant Insurance Company while responding to the claim has filed their written statement at Exh.12 and has denied the claim in toto. It is claimed by the Insurance Company that the owner of the motorcycle was not involved and it is further claimed that there was a breach of policy of the rickshaw which was insured with them. Learned Tribunal at Exh.27, after framing the issues answered the same against the Insurance Company.

14. The Tribunal has taken into account the oral evidence at Exh.34 and the evidence of Dr.Vijaykumar so as to justify the claim and the quantum as ordered under the award. The Insurance Company i.e. respondent No.2 in the claim petition filed a purshis at Exh.50

intimating the Tribunal that the Insurance Company did not want to lead any evidence.

15. Besides the oral evidence brought on record by the claimants, the copy of first information report Exh.13, spot panchnama Exh.14, charge-sheet Exh.15, certificate of Doctor Exh.16, injury certificate Exh.18 and photocopy of insurance policy Exh.19 were brought on record. The information in the prescribed form AA at Exh.20 and the permanent disability certificate at Exh.21 were also relied upon.

16. As stated herein above, the fact remains that if the Insurance Company has come out with a plea before this Court that there was breach in the policy conditions, it was for the appellant to establish the same before the Tribunal. From the record, it is noticed that the Tribunal while awarding the compensation has noticed that the appellant – Insurance Company has neither led any oral evidence nor any documentary evidence. Apart from that the reliance placed on the verdict delivered by Tribunal in M.A.C.P.No.4/2008 at Ambejogai which is arising out the same accident was also not brought on record though same was within the knowledge of Insurance Company. Apart from above, the point that is said to be canvassed that the matter be remanded to the Court below for deciding the issue as regards breach of policy afresh will be hardly of any assistance to the appellant, as the basic foundation in support thereof was not at all urged before the Tribunal. If the request for remand is granted then the same shall be amounting to permit the Insurance Company to fill in the lacunae.

17. Apart from above, the contention of Mr Malte that the vehicle in question was not insured pursuant to Section 147 of the Motor Vehicle Act, as the additional premium covering risk of pillion rider was not paid is concerned, it is noticed that no pleadings were made in this behalf before the Tribunal by the appellant Insurance Company.

18. In view of above, no case for interference is made out. The Tribunal while awarding compensation has rightly appreciated the material on record. As such, appeal fails, stands dismissed.

19. At this stage, Mr Malte makes a statement that the amount deposited be not permitted to be withdrawn by the claimants. The request made by Mr Malte is rejected in view of the fact that the Insurance Company has not produced on record any evidence justifying their stand dis-entitling the claimants for the compensation in question.

20. Copy of this judgment be placed in First Appeal No.803 of 2010.

**( N.W. SAMBRE, J.)**

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