

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

FIRST APPEAL NO. 1911 OF 2011

New India Assurance Co. Ltd.

... Appellant

VERSUS

Sumanbai Bhimrao Thorat & Ors.

... Respondents

.....
Mr Dhananjay Deshpande, Advocate for the appellant
Mr M. D. Narwadkar, Advocate for respondents No. 1 to 4
.....

**ALONG WITH
FIRST APPEAL NO. 1913 OF 2011**

CORAM : **S. V. GANGAPURWALA, J.**
DATE : **3RD SEPTEMBER, 2015.**

PER COURT:

. The Insurance Company has filed the present appeals being aggrieved by the award passed by the Tribunal u/s 166 of the Motor Vehicles Act.

2. Mr. Deshpande, the learned Counsel for appellant submits that the Tribunal could not have passed an award directing the Insurance Company to first pay and then recover from the owner. According to the learned Counsel, the driver of the vehicle did not have the valid

license and as such, the Insurance Company should not have been made liable to pay the compensation. It is a case of breach of policy.

3. Mr Narwadkar, learned Counsel for the claimants in both the matters, submits that, in such a case, an order of pay and recover is valid and same has been rightly passed by the reference Court. Learned Counsel relied upon the decision of the Hon'ble Apex Court in the case of **S. Iyyapan Vs M/s United India Insurance Company Ltd. and Anr.** reported in **2013(5) Bom.C.R. 102.**

4. I have heard the learned Counsel appearing for both the sides. The Tribunal has observed that the driver of the vehicle was not holding the license to drive the transport vehicle. The order of pay and recover can be passed in such case as held by the Hon'ble Apex Court in the case of **S. Iyyapan** referred to supra.

5. The learned Counsel for the appellant relied upon the judgment of the Apex Court in the case of **Oriental Insurance Co. Ltd. vs Shri Nanjappan and Ors.** reported in **(2004)13 SCC 224** and submits that, prior to the withdrawal of the amount by the claimants, the security of the owner is required to be shown and the same is to be attached.

6. The order of pay and recover has been rightly passed by the Tribunal. Considering the above, I pass the following order.

ORDER

- (i) The appeals challenging the judgment of the Tribunal are dismissed. However, it is ordered that the claimants would be entitled to withdraw the remaining amount on submitting solvent security / surety of like amount.
- (ii) The Insurance Company shall file execution petition within six weeks from today and will be entitled to attach the property of the owner of the vehicle and recover the said amount.
- (iii) In case the Insurance Company does not file execution petition within six weeks, then the claimants would be entitled to withdraw their security/surety.
- (iv) The claimants shall co-operate with the Insurance Company in showing the security of the owner.

First Appeals are accordingly disposed of. No costs.

[S. V. GANGAPURWALA, J.]

sgp