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

First Appeal No. 1101 of 2014

National Insurance Company Ltd.,
Through its Divisional Office,
Divisional Manager, Hajari Chambers, .. Appellant
Station Road, Aurangabad. (Original respondent no.4)

versus

1. Smt. Karuna w/o. Sandipan Patil (Mane),
   Age : 35 years,
   Occupation : Household,
   R/o. Kalkoti, Post Ajansonda (Bk.),
   Taluka Chakur, District : Latur.

2. Ramrao s/o. Sandipan Patil (Mane),
   Age : 16 years,
   Occupation : Education (minor),
   R/o. Kalkoti, Post Ajansonda (Bk.),
   Taluka : Chakur,
   District : Latur.

3. Avinash s/o. Sandipan Patil (Mane),
   Age : 14 years,
   Occupation : Education (minor),
   R/o. Kalkoti,
   Post Ajansonda (Bk.),
   Taluka : Chakur,
   District : Latur.

4. Kum. Ayodhya d/o. Sandipan Patil (Mane),
   Age : 12 years,
   Occupation : Education (minor),
   R/o. Kalkoti,
   Post Ajansonda (Bk.),
   Taluka : Chakur,
   District : Latur.

5. Vaibhav s/o. Sandipan Patil (Mane),
Age : 10 years,
Occupation : Education (minor),
R/o. Kalkoti,
Post Ajansonda (Bk.),
Taluka : Chakur,
District : Latur.

6. Shahjirao s/o. Sidram Patil,
Age : 65 years,
Occupation : Nil,
R/o. Kalkoti,
Post Ajansonda (Bk.),
Taluka : Chakur,
District : Latur.

7. Sau. Kaushalyabai w/o. Shahajirao
Patil (Mane),
Age : 58 years,
Occupation : Household,
R/o. Kalkoti,
Post Ajansonda (Bk.),
Taluka : Chakur,
District : Latur.

8. Roshanlal Jat s/o. Shravanlalji,
Age : Major,
Occupation : Driver,
R/o. Malampura,
Post : Barsani,
Tahsil : Asind,
District : Bhilwada (Rajasthan).

9. SH. Shravan Suwalal SH. Devilal Jat,
Age : Major, Occupation : Business,
R/o. Malampura, Tahsil : Asind,
District : Bhilwada (Rajasthan).

10. SH. Ladulal s/o. Dhukalji Jat,
Age : Major, Occupation : Business,
R/o. Malampura,
Tahsil : Asind,
District : Bhilwada (Rajasthan).

.. Respondents
(Nos.1 to 7 - Original claimants
&
Nos.8 to 10 - Original
respondents)

....

Mr. Sudhir V. Kulkarni, Advocate, for the appellant.

Mr. Sanjay V. Mundhe, Advocate, for respondent nos.1 to 7.

Respondent nos.8 to 10 served (Absent).

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CORAM : A.M. BADAR, J.

DATE : 19TH NOVEMBER 2015

ORAL JUDGMENT :

1. This is an appeal by the insurer of the tractor bearing registration No. RJ-06/RA-5594, feeling aggrieved by the judgment and award dated 15th December 2011, passed by the learned Principal District Judge & Ex-Officio Member of Motor Accident Claims Tribunal, Latur, in M.A.C.P. No. 107/2009 filed by claimants.

2. Respondent nos.1 to 7 herein are the original claimants whereas respondent no.8 was original respondent no.1 - driver of the tractor. Respondent nos.9 and 10 were original respondent nos.2 and 3 - joint owners of the tractor involved in the accident. For the sake of convenience, parties shall be referred to as per their original capacity.

3. Brief facts leading to the institution of the present appeal are thus :-

(a) According to the claimants, Sandipan Patil - husband of claimant no.1 was riding motorcycle bearing registration No. MH-24/E-8064 on 9-

2-2009. All of a sudden, tractor bearing registration No. RJ-06/RA-5594 which was driven in rash and negligent manner, dashed the motorcycle and caused the accident. Sandipan succumbed to the injures suffered in the accident. Claimants pleaded that income of deceased Sandipan was Rs. 15,000/- per month. He was doing the work of animal husbandry. On account of his death in vehicular accident, on all counts claim of Rs. 7,00,000/- was lodged against driver, owner and insurer of the tractor.

(b) The claim petition came to be opposed by filing written statement at Exhibit 16 by the Insurance Company. It denied all adverse averments including income and age of deceased Sandipan. The Insurance Company contended that insured tractor was being driven by a person who was not holding valid and effective driving license at the time of accident. As owners of the tractor committed breach of terms and conditions of policy and permit, no liability can be fastened on the Insurance Company to indemnify the insurer.

(c) Respondent nos.2 and 3 - owners of the tractor opposed the claim by filing written statement at Exhibit 29. They also denied each and every adverse averment but admitted the fact that thery are owners of the tractor and the same was insured with respondent no.4 - Insurance Company at the time of the accident. They further alleged that it was the deceased who was riding the motorcycle in rash and negligent manner causing accident in question.

(d) On the basis of rival pleadings, issues were framed and parties went for trial.

(e) In order to prove their claim, claimants examined Shahaji Patil - father of deceased Sandipan and also placed reliance on Police papers and other documents in respect of the accident in question. In rebuttal, no evidence was adduced by the respondents.

4. After hearing respective parties to the petition and on considering the evidence on record, the learned Member of the Tribunal allowed the claim petition partly and awarded compensation Rs. 6,69,000/- with interest at the rate of 6 % per annum from the date of petition till its realization to the original applicants - claimants, to be paid by driver and owners of the tractor and present appellant - Insurance Company jointly and severally.

5. As the instant appeal is limited to the issue regarding breach of terms and conditions of insurance policy, this Court need not go to other aspects of the matter including the quantum of compensation as well as rash and negligent act of driver of the tractor which is held to be proved by claimants.

6. Now, let us examine whether appellant - Insurance Company has proved breach of terms and conditions of contract of insurance thereby claiming exoneration from liability to pay compensation. Mr. Kulkarni, the learned Counsel appearing for the applicant - Insurance Company drew my attention to the Police papers in respect of the accident in question, including the FIR at Exhibit 44 and spot Panchanama at Exhibit 45. With the aid of these Police papers, Mr. Kulkarni, the learned Counsel appearing for the appellant, submitted that during the course of investigation, Police could not collect driving license of driver of the tractor. He was

prosecuted for the offence under Section 184 of the Motor Vehicles Act, 1988, which indicates that he was not holding valid driving license at the time of the accident in question. According to the learned Counsel for the appellant, claimants have not established that the driver of the tractor was holding valid driving license in order to validly entertain the claim against the Insurance Company. According to the learned Counsel for the appellant, even owners of the tractor in question have failed to furnish information regarding name of the drivers and particulars of driving license as per mandate of Section 134 of the Motor Vehicles Act, 1988, to the Insurance Company. As such, by drawing adverse inference against them, it needs to be held that the Insurance Company has established breach of terms and conditions of contract of insurance.

7. As against this, Mr. Mundhe, the learned Counsel appearing for respondent nos.1 to 7, supported the impugned judgment by contending that burden of proving breach of terms and conditions of contract of insurance always lies on the Insurance Company and as there is no evidence on record on this aspect, the impugned judgment and award is perfectly correct.

8. On the basis of rival submissions, I have carefully perused record and proceedings including Police papers in respect of the accident in question. In the case of ***National Insurance Co. Ltd. Vs. Swaran Singh and others***, reported in ***2004(1) ACJ 1***, the Hon'ble Apex Court has held that in order to avoid liability to pay compensation, Insurance Company should not only establish the available defences raised in the proceedings claiming compensation but it should also establish breach on the part of owner of the vehicle. Burden of establish breach of terms and conditions

of contract of insurance always lies on the Insurance Company. A party raising assertion is required to prove those by adducing cogent evidence.

9. Section 134 of the Motor Vehicles Act, 1988, requires driver of the vehicle or any other person in-charge of the vehicle to furnish name of driver and particulars of the driving vehicle to Police soon after happening of the accident. No evidence is forthcoming on record to show that this compliance was not done by the driver or owner of the tractor in question. Merely because driver of the tractor was prosecuted under Section 184 of the Motor Vehicles Act, 1988, one cannot jump to the conclusion that he was not holding valid and effective driving license at the time of accident in question. In absence of evidence to that effect, no fault can be found with the conclusion of the learned Member of the Tribunal, that the Insurance Company failed to prove breach of terms and conditions of insurance policy by the insurer.

10. In the result, it needs to be held that the appeal is devoid of any substance and as such, the same is dismissed with no order as to costs.

(A.M. BADAR)
JUDGE

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