

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

**FIRST APPEAL (ST.) NO. 14331 OF 2013
WITH
CIVIL APPLICATION NO. 6806 OF 2013**

M/s. Shriram General Insurance Company
Limited, through its Manager,
Aurangabad.

...Appellants

versus

1. Mogribai Jitendra @ Jitesh Vasave,
Age: 24 years, Occ: Household,
2. Priyanka Jitendra @ Jitesh Vasave,
Age: 7 years, Occ: Education,
3. Pramesh Jitendra @ Jitesh Vasave,
Age: 5 years, Occ: Education,
- No. 2 & 3 U/G of No.1 Mogribai.
4. Diwani Ajabsing Vasave,
Age: 57 years, Occ: Nil,
5. Jirma Diwanji Vasave,
Age: 52 years, Occ: Household,
6. Suraj Diwanji Vasave,
Age: 17 years, Occ: Education,

No. 6 Minor U/G No. 5 Jirma Vasave.

All R/o. 140, Nehru Housing Society,
Deopur, Dhule, Taluka & Dist. Dhule.

7. Neetesh Gamriya Gamit,
Age: Major, Occ: Business,
R/o. Narayanpur, Tq. Uchhal,
District Tapi, Surat, Gujrat State.

...Respondents

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Mr. Mohit Deshmukh, Advocate h/f Mr. S.G. Chapalgaonkar,
Advocate for appellant.

Mr. P.S. Patil, Advocate for respondent Nos. 1 to 6.

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CORAM : N.W. SAMBRE, J.

DATE : 18TH APRIL, 2015

ORAL ORDER :

Heard respective Counsel. With the consent of learned Counsel for the parties, the appeal is taken out for final disposal at admission stage.

2. The award delivered by Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No 61 of 2011 on 05/11/2012 is sought to be assailed by the Insurance Company. Learned Counsel for the appellant raised two-fold contentions; (a) that the claim should be defeated having regard to scheme of Section 163A of the Motor Vehicles Act and (b) that there was breach of policy conditions as driver was not holding valid licence.

3. So as to discharge its burden for demolition of the application under Section 163A of the Motor Vehicles Act, learned Counsel for the appellant would urge that as the vehicle driver at the relevant time drove the vehicle in rash and negligent manner, the said aspect is required to be accepted as it is and claim ought to

have been rejected by the tribunal. If the above referred contentions are analyzed in the light of evidence brought on record and cross examination of the witness of the claimant by the present appellant, it will be appropriate to refer that in the cross examination of the appellant rightly established that the accident was caused because of rash and negligent driving of the deceased driver. The tribunal has not accepted the said based on the evidence brought before it. In view of iota of evidence available before the tribunal, the tribunal has proceeded to pass the award of compensation.

4. Having regard to the said observations and the conduct of the present appellant while examining the witnesses not establishing the fact that the accident was caused because of rash and negligent driving of the deceased driver, in my opinion, the tribunal was right in awarding compensation.

5. So far as the next contention as regards breach of policy conditions is concerned, the burden was on the appellant to prove that the driver was not holding valid driving licence which was not at all discharged.

6. As such, present appeal lacks merit, stands dismissed.

7. In view of dismissal of the appeal, nothing survives in the civil application for stay, same stands disposed of accordingly.

[N.W. SAMBRE, J.]