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

**FIRST APPEAL NO. 1151 OF 2007
WITH
CIVIL APPLICATION NO.19 OF 2008**

New India Assurance Co.Ltd.,
Divisional Manager,
Jalgaon through Sr.Divisional
Manager at Aurangabad ...Appellant

versus

1. Ramesh Chawdas Nhavkar
(Kumbhar) Age 47 years,
Occu. Labour

2. Sou. Nirmala w/o Ramesh
Navkar, Age 44 years,
Occu. Household

3. Yogesh s/o Ramesh Navkar,
Age 17 years, Occu. Education

4. Mukesh s/o Ramesh Navkar,
Age years, Occu. Education

The respondents No.3 and 4
herein are minors and u/g
of respondent No.1 herein

All above said respondents
R/o Kanalada, Taluka and
District Jalgaon

5. Kamaljeet Kaur Mahendrapalsingh
Age Major, Occu. Business,
R/o New Kalawati road, Sakehi
Jamshedpur (W.B.) ...Respondents

.....

Mr. S.G. Chapalgaonakr, Advocate for appellant
Mr. M.M. Bhokarikar, Advocate for respondents No.1 to 4

CORAM : N.W. SAMBRE, J.

DATE : 10th JUNE, 2015

ORAL ORDER :

This appeal is by the Insurance Company questioning the legality and validity of the award delivered by Motor Accident Claims Tribunal, Jalgaon in M.A.C.P. No. 155 of 2000, whereby the claimants/respondents are awarded compensation of Rs.3,10,000/- inclusive of amount awarded under No Fault Liability with 6% p.a. interest from the date of registration of the claim petition.

2. The facts giving rise for filing the present appeal, are as under.

One Vilas Ramesh Kumbhar met with an accident, resulting into his death on 05/01/2000 having dashed by truck bearing registration No. NL-05-A-5645.

3. The claimants/respondents are the parents and brothers. Said Vilas was working in a grocery shop of PW-2 Rajendra Chavan on the monthly salary of Rs.2500/-

4. Based on the above referred accident, a claim was brought by the claimants, which was resisted by the appellant Insurance Company by filing written statement at Exhibit-13. Based on the pleadings of the parties, the tribunal framed following issues at Exhibit-26 and answered the same accordingly.

ISSUES	FINDINGS
(1) Whether the death of Vilas Ramesh Kumbhar was occurred due to rash negligent driving of the driver of truck bearing No. NL-05-A-5645 owned by the respondents?	In the affirmative
(2) Whether the petitioners are entitled for compensation and interest jointly and severally from the respondents, if so, to what amount?	Yes, Rs.3,10,000/- (inclusive amount of no fault) with interest at the rate of 6% p.a. from both the respondents

5. The tribunal, in view of the findings recorded, awarded the compensation as narrated herein above. As such, present first appeal.

6. Learned Counsel for the appellant Insurance Company would urge that the tribunal has committed an error of law apparent on the face of record, in ignoring the fact that the policy in question against which the claim was lodged, was neither issued by the appellant nor by any of its office. So as to support the said contentions, he has relied upon the evidence of Suresh Chavan, examined on behalf of respondent No.2. In addition to above, they have also relied upon the letter issued by the investigator engaged

by appellant insurance company, so as to find out the status of insurance policy of the vehicle insured.

7. According to learned Counsel for the appellant, there was a fundamental defect in the policy, as the policy itself was found to be vague and bogus, as such, the claim was not admissible and the award is liable to be set aside.

8. Learned Counsel for the respondents-claimants, while opposing the above referred contentions, would urge that though insurance company has denied its claim, however, tribunal having regard to the nature of evidence on record has already held that the policy in question was issued by the insurance company and the claim, as such, was answered in favour of the claimants. He prayed for dismissal of the appeal.

9. Based on the rival contentions of the parties, this Court is required to determine as to whether the tribunal was right in awarding the compensation in the background of objection to the genuineness of the policy.

10. So as to establish the case before the tribunal, parties herein have examined their respective witnesses. The claimants examined claimant No. 2 Nirmala at Exhibit-28, Rajendra Chavan PW-2 at Exhibit-41, employer of deceased Vilas so as to prove his

income, whereas insurance company, filed affidavit of Suresh Chavan, Senior Assistant in Legal Department, in addition to documentary evidence.

11. The accident in question was not seriously disputed by the appellant insurance company in view of the F.I.R. Exhibit-29, spot panchnama Exhibit-30, inquest panchnama Exhibit-31, post mortem report Exhibit-32, form of accident report Exhibit-33, certificate of registration of the truck Exhibit-34, certificate of fitness of the truck Exhibit-35 and insurance policy Exhibit-36.

12. Admittedly, insurance policy in question Exhibit-36 was signed and certified by the Police Inspector, Jalgaon City Police Station, with whom the offence was registered against the vehicle owner and against the driver. The Police Inspector was neither cross examined nor summoned by the appellant herein to establish about issuance of true copy of the insurance policy. Apart from above, it is noticed that admittedly, the vehicle in question i.e. truck was registered with the office of District Transport Office, Wokha, Nagaland and the policy Exhibit-36 reflects that said truck was insured with the appellant for a period from 01/07/1999 to 30/06/2000. The vehicle owner has not entered into witness box to challenge the policy. Apart from above, the witness of respondent No. 2 Suresh has stated that the policy in question was not issued by

the Kolkota Regional Office and sought to place reliance upon the Code Numbers of the various States. He further deposed that an independent Investigator was appointed by Dimapur Divisional Office of the appellant so as to inquire into policy produced by the vehicle owner. Though this witness deposes that the policy in question Exhibit-36 is a bogus document, however, the fact remains that the Investigator who was engaged by the insurance company was not examined. Apart from above, insurance company has neither produced the policy nor taken any efforts to produce the details of the insurance of the offending truck from the office of the Regional Transport Authority so as to demonstrate the policy issued by the appellant to be fake.

13. So far as the claim in question is concerned, admittedly, the claimants have received the copy of the policy from proper custody i.e. the custody of police officer, who has investigated the matter of accident, in question. Apart from above, it is noticed that in the written statement Exhibit-13, the appellant has not raised serious challenge to the insurance policy Exhibit-36.

14. The alleged breach or non issuance of the insurance policy is not at all proved by the appellant insurance company, as the burden shifts on it to do so.

15. In my opinion, the claimants/respondents by rightly relying upon Exhibit-36-insurance policy have established their claim and the tribunal, upon proper adjudication of evidence and claim put forth before it, has granted the same.

16. As such, no case for interference is made out. The appeal fails, stands dismissed.

17. In view of dismissal of appeal, civil application does not survive and stands disposed of.

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

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