IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 346 OF 2010
WITH
CIVIL APPLICATION NO. 1858 OF 2010
WITH
CIVIL APPLICATION NO. 2639 OF 2010
WITH
CIVIL APPLICATION NO. 7219 OF 2014

M/s. IFFCO TOKIO General Insurance Co. Ltd... Appellant

Versus

Varsha d/o. Subhash Nimoe (minor) .. Respondents
u/g of her father & ors.

WITH
CIVIL APPLICATION NO. 9107 OF 2011
WITH
CIVIL APPLICATION NO. 9108 OF 2011
WITH
CIVIL APPLICATION NO. 9109 OF 2011
WITH
CIVIL APPLICATION NO. 1915 OF 2012
WITH
FIRST APPEAL ST. NO. 17758 OF 2011

M/s. IFFCO TOKIO General Insurance Co. Ltd... Appellant

Versus

Subhash Ramchandra Nimone & ors. .. Respondents

Mr. V.N. Upadhye, Advocate for the appellant.
Mr. N.A. Matkar h/f. Mr. R.V. Gore, Advocate for R-1.

CORAM : A.V. NIRGUDE,J.
DATED : 03.08.2015

P.C. :-

1. Heard. For the reasons stated in Civil Application No.9107 of 2011, the delay caused in filing the first appeal is condoned. The Civil Application accordingly stands allowed. The first appeal be registered.

2. Both these appeals can be decided finally at admission stage by this common order. The appellant in both these appeals is insurance company, who was held liable to pay compensation to respondent No.1 in both these cases. The respondents alleged in their petition that when they were riding on a motor cycle at about 4.30 p.m. on 14th October, 2001, driver of Tata Indica taxi car came from opposite direction and collided on the motor cycle, which resulted into causing injuries to respondent No.1 in both the appeals. The appellant insurance company was allowed to cross-examine the witnesses under section 170 of the Motor Vehicles Act, because the owner of the Indica car remained absent. In the defence of the appellant, it was suggested that this was a case of contributory negligence but during the course of evidence, no material was brought on record to show that the motor cycle rider was also responsible for

the accident. The driver of the car was not examined. Learned Member held that it was only due to negligence of the car driver the accident took place. There is no material before me to hold otherwise. The findings recorded by the learned Member is, therefore, confirmed.

3. Learned Counsel for the insurance company raised second point. He said that after tribunal delivered the judgment, during investigation his client found that the driver of the car did not hold valid driving licnece and therefore, there could be a case of breach of policy agreement. I am afraid, this cannot be considered at all because this defence is admittedly an afterthought. The evidence about the driver's inadequate driving licence was available on investigation papers and yet, it was overlooked due to negligence of the appellant/insurance company. They were not permitted to rely on this evidence and the new ground. There is no other question arising in these appeals. The appeals are dismissed.

4. In view of discussion in the order, the Civil Applications under Order 41 Rule 27 also dismissed.

5. The amount deposited in the Court shall be handed over to the respondents, as per terms of the Award.

6. All connected Civil Applications accordingly stand disposed of.

[A.V. NIRGUDE,J.]

snk/2015/AUG15/fa346.10