IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL STAMP NO. 21676 OF 2015

The Oriental Insurance Co. Ltd.
Through its Divisional Manager,
Aurangabad .. Appellant

Versus

Rukhmini Sakharam Londhe
and others .. Respondents

Shri Arun G. Kanade, Advocate for the Appellant.
Shri S. S. Rathi, Advocate for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.
DATE : 09TH OCTOBER, 2015.

PER COURT :

. Mr. Kanade, the learned counsel for the appellant submits that, the Tribunal ought to have exonerated the Insurance Company as it is clear case of breach of policy. The driver of the vehicle which was insured by the present appellant was not holding valid driving license. The said fact is also borne out from the record. Even the Tribunal has specifically came to the conclusion that the driver of the Indica car was not holding valid and effective driving license and there is case of clear breach of policy, still order of pay and recover has been passed against the present insurance company, which is illegal.

2. Mr. Rathi, the learned counsel for the claimants relies on the judgment of the Apex court in the case of **S. Iyyapan Vs. M/s United India Insurance Co. Ltd. and another** reported in ***AIR 2013 SC 2262*** and submits that, in such case order of pay and recover is legal and proper.

3. Though the original opponents are made jointly and severally liable to pay the compensation amount, further order is passed by the Tribunal that the opponent No. 1 i. e. Insurance company shall pay the amount of compensation and then recover the same from the owner of the Indica car.

4. The Apex Court in the case of **S. Iyyapan Vs. M/s United India Insurance Co. Ltd. and another** referred supra has observed in para Nos. 17 and 18 as under :

> "17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly

situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.

18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

5. Considering the aforesaid aspects of the matter and the fact that, though on the date of accident driver of the vehicle was not holding effective and valid license, the order of pay and recover is legal and proper. The first appeal accordingly stands disposed of.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15