

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

FIRST APPEAL NO.2343 OF 2012

Bajaj Allianz General Insurance ... Appellant

Versus

Balasaheb Dagadu Aher ... Respondents
& others

Advocate for Appellant : S.G.Chapalgaonkar (Beedkar)
Advocate for respondent no.1: Shri R.B.Dhakne

CORAM : S V GANGAPURWALA, J.

Dated: 16th October 2015

PER COURT :-

1. Mr. Chapalgaonkar, the learned counsel for the appellant, submits that the order of pay and recover has been passed. The driver of the vehicle did not possess the valid licence. According to learned counsel, it is a case of breach of policy. The Insurance Company ought to have been exonerated. Even the driver of the said vehicle was not added as a party while arriving at the aspect of negligence. The learned counsel submits that, at least notice ought to be issued to the driver of the vehicle being a formal party.

2. I have heard Mr. Dhakne, the learned counsel for the claimants.

3. Even if the case of the present appellant is accepted that the driver of the vehicle was not possessing valid licence then in that case the order of pay and recover is rightly passed as is held by the Apex Court in a case of S. Iyyapan Vs. M/s.United India Insurance Co.Ltd. and another reported in AIR 2013 SC 2262

4. As far as the non addition of the driver is concerned for the claimant it would be a case of composite negligence wherein he can recover the whole amount from any one. So as far the claimant is concerned the issue of negligence is not relevant.

5. In light of the above, first appeal is dismissed. No costs.

6. In view of dismissal of the appeal, the claimant is entitled to withdraw the amount as awarded by the Tribunal. Civil application disposed of.

7. Civil application for stay also stands disposed of.

(S V GANGAPURWALA, J.)