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

FIRST APPEAL NO.2500 OF 2014

1. Sulabai wd/o Baburao
Waghmare, Age 48 years,
Occu. Household,

2. Santosh Baburao Waghmare,
Age 24 years, Occu. Student
(Labour)

3. Ankush Baburao Waghmare,
Age 22 years, Occu.Student
All R/o Uttam Nagar,
Jawahar Colony, Aurangabad .. Appellants
(Orig.Claimants)

Versus

1. Bajaj Allianz Insurance Company
Ltd., through its Branch Manager,
Adalat road, Adjacent to LIC Office,
Aurangabad

2. Tarachand s/o Nanabhau Gonde,
Age 25 years, Occu. Business,
R/o At Post Naregaon, Galli No.5,
Baluchi Galli, Ghat Nagar,
Naregaon, Taluka and District
Aurangabad ..Respondents

Mr Amol Gandhi, Advocate for appellants
Mr Mohit Deshmukh, Advocate h/f Mr S.G. Chapalgaonkar, Advocate
for respondent No.1
Respondent No.2 served

CORAM : N.W. SAMBRE, J.

DATE : 6th July 2015

PER COURT

1. This appeal is by claimants in Motor Accident Claims Petition No.183 of 2011.

2. The vehicle in question was owned by one Tarachand, respondent No.2 to the claim petition which vehicle gave dash to deceased Baburao Waghmare from back side, resulting into his death. As such compensation of Rs.3,00,000/- was claimed.

3. The Tribunal, by its award dated 16th August 2014 allowed the claim petition in part and ordered payment of compensation of Rs.2,78,500/- to the claimants and absolve the respondent No.1 – Insurance Company.

4. Feeling aggrieved thereby the claimants filed present appeal seeking recovery of compensation against the Insurance Company and for recovery of the same by the Insurance Company from the vehicle owner.

5. When the appeal was filed, this Court had issued notice to the respondents with an intimation that the appeal will be taken out for final disposal at the stage of admission.

6. The respondent No.2 is absent though served.

7. Heard Mr Gandhi, learned Counsel for appellants and Mr Deshmukh, learned Counsel for respondent No.1 – Insurance Company.

8. Mr Gandhi would urge that for absolving the Insurance Company and for shifting the burden of payment of compensation on the vehicle owner, the learned Tribunal has relied upon the evidence of witness who was examined by original respondent No.1 – Insurance Company. According to him, even if evidence of the said witness is taken into account that is to say the driver of the vehicle failed to produce the licence, the Tribunal should have awarded compensation to be paid by Insurance Company and to be recovered from the vehicle owner by the Insurance Company.

9. Learned Counsel for respondent No.1 – Insurance Company tried to support the order of the Tribunal. According to Insurance Company, enough evidence was brought on record so as to demonstrate the breach of the policy, as the vehicle owner and the driver – Tarachand i.e. respondent No.2 were not holding the valid driving licences. He would urge that the Insurance Company has taken enough efforts by filing application before the Tribunal to examine the Officer from the Regional Transport Office, however, the said application was rejected by the Tribunal on the ground that the recording of evidence was closed. He would urge that the appeal be dismissed.

10. Having considered the rival contentions of the parties, while dealing with the liability to pay the compensation, the Tribunal, while answering the issue No.2 has appreciated the evidence of the witness produced by the Insurance Company viz. DW-1 Dhanesh Kulkarni at

Exh.38. It is required to be taken note of the fact that the notices issued to the vehicle owner Tarachand were not honoured by him by producing the original driving licence. Apart from above, the respondent No.2 has not entered into witness box, so as to avoid the said issue as regards the holding and proving of the licence in question.

11. Apart from above, the fact remains that what was brought on record was efforts by the Insurance Company to prove the fact that the respondent No.2 Tarachand was not holding a valid driving licence and as such, there was breach of policy.

12. In my opinion, so far as above referred observations made by the Tribunal are concerned, the same calls for modification. The Insurance Company with whom the vehicle in question was insured is liable to pay the compensation, however, with a rider to recover the same from the vehicle owner, as the vehicle owner was failed to discharge that he was having valid driving licence at the time of accident in question in the background of stand of the present appellant and evidence brought on record.

13. In view thereof, the award delivered by the Tribunal is modified to the extent that the respondent No.1 - Insurance Company to pay the compensation, as ordered by the Tribunal in terms of Clause [3], [4], [5], [6], [7] and [8]. It shall be open for the Insurance Company to recover the amount from the vehicle owner, i.e. respondent No.2 – Tarachand to the claim petition.

14. In view of above observations, the Insurance Company is directed to deposit the amount in this Court, as ordered above within a period of eight weeks from today.

15. The appeal stands partly allowed accordingly.

(N.W. SAMBRE, J.)

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