

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

FIRST APPEAL NO. 71 OF 2015

The Reliance General Insurance Company,
Through It's Authorized Signatory/
Manager, Office at Opposite District
Court New Building, 2nd Floor,
Aurangabad Business Center,
Adalat Road, Aurangabad. .. Appellant

Versus

1. Smt. Manda Wd/o Laxman Harale,
Age : 23 Years, Occu. : Household,
2. Smt. Janabai W/o Vijay Harale,
Age : 53 Years, Occu. : Household,
3. Vijay S/o Bhaguji Harale,
Age : 59 Years, Occu. : Labour,
4. Balu S/o Laxman Harale,
Age : 4 Years, Occu. : Nil,

Respondent No. 4 being minor
u/g of respondent No. 1 i. e.
Smt. Manda.

All R/o Nandur Haveli, Tq. & Dist. Beed.

5. Sayyed Fayumm Sayyed Mukramm
Age : 28 Years, Occu. : Driver,
R/o Dahiphal, Tq. & Dist. Beed
(Owner of Ape Rickshaw)

6. Shaikh Latiph Shaikh Aphasar,
Age : 28 Years, Occu. : Driver,
R/o Hingani (Haveli),
Tq. & Dist. Beed. .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri A. L. Kanade, Advocate for Respondent Nos. 1 to 3.
Shri Sk. M. A. Jahagirdar, Advocate for the Respondent No. 5.

CORAM : S. V. GANGAPURWALA, J.
DATE : 14TH OCTOBER, 2015.

ORAL JUDGMENT :-

. The application for compensation filed by the respondent Nos. 1 to 4/claimants U/Sec. 166 of the Motor Vehicles Act (for short "M.V. Act") is allowed. Aggrieved thereby the Insurance Company has approached this Court.

2. According to the learned counsel for the appellant, the driver of the vehicle did not have license. Even directions were issued by the Tribunal to produce the license, but the said license was not produced, still the Tribunal has fastened liability on the Insurance company. According to the learned counsel, even the involvement of the vehicle itself was disputed. The evidence on record would show that, the vehicle in question was not at all involved in the accident.

3. Mr. Kanade, the learned counsel appears for the original claimants and submits that, the driver of the vehicle was

possessing requisite license as on the date of accident. The involvement of the vehicle in the accident is proved by evidence by preponderance of probabilities.

4. Mr. Jahagirdar, the learned counsel for the respondent No. 5 submits that, the respondent No. 5 has filed civil application for additional evidence. The said respondent could get the copy of the license of the driver of the vehicle, wherein he was entitled to drive three wheeler vehicle. The said additional evidence be allowed to be produced on record.

5. I have considered the judgment. The appeal is based on two grounds (i) vehicle was not involved in the accident and (ii) driver of the said vehicle been possessing the necessary license.

6. In the present matter the owner of the vehicle has filed an application for additional evidence. With the said application has produced the copy of the license said to have been issued to the driver of the vehicle. In fact, the said license will have to be proved as it is not admitted by other party i. e. the Insurance Company. Even the original license is not before this Court to arrive at a particular conclusion. Considering the fact that, copy of the license is produced, it would be appropriate to remit the matter back to the Tribunal for deciding the aspect as to whether the driver of the vehicle had the valid driving license to drive the

said vehicle on the date of accident.

7. As the matter is being remitted back, it would be open for the parties to adduce the evidence with regard to other aspects of the matter also, such as involvement of the vehicle, quantum, so also whether the driver of the said vehicle was holding valid license and all other aspects of the matter.

8. In the result, the impugned judgment and award is quashed and set aside. The parties are relegated before the Tribunal. The claim petition bearing M.A.C.P. No. 175 of 2011 is restored to its original position. The parties shall appear before the claim Tribunal on 16.11.2015. Considering the fact that, matter is remitted back, the Tribunal shall decide the proceedings expeditiously and preferably within a period of six (6) months from the date of appearance of the parties. The appeal is partly allowed. No costs.

9. Whatever amount is deposited is transmitted to the concerned Tribunal.

Sd/-

[S. V. GANGAPURWALA, J.]