IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.76 OF 2010

The New India Assurance Co. Ltd.
Velho Building, 3rd Floor,
Panaji-Goa. …. Appellant

V/s

1 Smt. Vibhavari R. Fadte,
widow of late Ravindra Fadte,
aged 47 years, housewife,
resident of Rajani Apartments,
TF2 Green Hill, Faira, Alto,
Mapusa, Bardez, Goa.

2 Shri Abhijit R. Fadte,
son of late Ravindra Fadte,
aged 25 years, unemployed,
resident of Rajani Apartments,
TF2 Green Hill, Faira, Alto,
Mapusa, Bardez, Goa.

3 Miss. Slesha R. Fadte,
daughter of late Ravindra Fadte,
aged 18 years, student,
All resident of Rajani
Apartments,
TF2 Green Hill, Faira, Alto,
Mapusa, Bardez, Goa.

4 Shri Dinesh Vishnu Niravdekar,
Resident of H.No.142,
Karaswada, Mapusa,
Bardez-Goa.

5 Shri Santosh Mohan Bandekar,
Resident of H.No.318,
Shetyewado, Duler, Mapusa,
Bardez-Goa. ….. Respondents

Mr. E. Afonso, Advocate for the Appellant.
Mr. J.P. Mulgaonkar, Advocate for Respondents No.4 & 5.

CORAM : K.L. WADANE, J.

Reserved on : 27th OCTOBER, 2015
Pronounced on : 19th NOVEMBER, 2015

JUDGMENT :

Present appeal is directed against the judgment and award passed by the Presiding Officer of the Motor Accident Claims Tribunal, Mapusa-Goa in Claim Petition No.16/2007 dated 30/09/2008 by which the Claim Petition is partly allowed and the respondents no.2 & 3 are held to be jointly and severally liable to pay the compensation as mentioned in the operative order. Being aggrieved with the same, the respondent no.3/Insurance Company preferred this appeal mainly on the ground that the respondents had committed breach of the terms and conditions of the policy amongst the other grounds. The brief facts of the case may be stated as follows:

The parties shall hereinafter be referred to in the manner in which their names appear in the cause title of the said Claim Petition.

2. The claimants/the legal heirs of the deceased Ravindra filed petition under provisions of Section 66 of the Motor Vehicles Act. Accident occurred on 11/09/2006 at about 21.55 hours in front of Anand

Vihar Building, Peddem, Mapusa - Karaswada road. At the relevant time of the accident, deceased Ravindra was riding a scooter bearing registration no.GA-01-F-9692. At the same time, the respondent no.1 was riding the scooter bearing registration no.GA-01-L-5438. The respondent no.1 while driving the scooter in rash and negligent manner gave a violent dash to the scooter driven by the deceased. As a result of the accident, Ravindra sustained grievous injury and succumbed at Vrundavan Hospital, Mapusa.

3. At the time of the accident, the deceased was about 55 years of age. He was serving as a computer operator in the Bank of Baroda. His monthly earning was Rs.22,093/-. Due to the death of Ravindra, the claimant no.1 being the widow lost her husband and claimants no.2 & 3 being the children lost their father as well as the income which the deceased was earning. Thus, the claimants have claimed total compensation of Rs.14,30,000/- from the respondents.

4. The respondents no.1 & 2 have appeared and filed their written statement. The contents in para no.10 of the written statement show that there was no dispute regarding factum of the accident. However, it is the contention of the respondents no.1 & 2 that the accident occurred due to

sole negligence of the deceased himself. At the relevant time, the deceased was riding on the scooter from right side portion of the road, that too without switching on the head light of the scooter. Further, the deceased on account of spectacles could not see the respondent no.1 coming from opposite direction and gave a dash to the scooter of the respondent no.1. In their written statement they have specifically contended that the respondent no.2 was a pillion rider on the scooter driven by respondent no.1.

5. Respondent no.3 has filed its written statement and contested the claim petition on the ground that the respondent no.1 was not holding licence to drive the said vehicle. Hence, there was breach of the terms and conditions of the policy since respondent no.1 was not holding driving licence. The respondent no.1 has specifically denied this and has contended that the accident occurred due to the negligence of the deceased himself.

6. Considering the rival pleadings of the parties, the learned Presiding Officer had framed three issues. The first issue was relating to the death of the deceased in the motor vehicle accident which was answered in the affirmative. The second issue was relating to the

negligence of the respondent no.1 and third was regarding the entitlement of the compensation and its extent. Both the second and third issues were answered in partly affirmative.

7. In the Trial Court, the claimant no.1 adduced her oral evidence at Exhibit 25 and she produced the relevant documents i.e. the FIR, complaint, inquest panchnama, autopsy report, particulars of the vehicle, salary certificate, death certificate, birth certificate of the claimants, marriage certificate, etc. In addition to the above evidence, AW2 is examined to prove the contents of the FIR/complaint. AW3 is examined as the panch witness to prove the panchanama at Exhibit 44 with sketch. The Investigating Officer is examined as AW4.

8. As against this, respondent no.1 filed his affidavit at Exhibit 54. During his oral evidence his learning licence was produced and marked as Exhibit 55. Respondent no.2, during his oral evidence, has filed his affidavit at Exhibit 58 and produced his driving licence at Exhibit 59. As against this, one witness was examined on behalf of the respondent no.3, who was the Branch Manager, who deposed about the alleged violation of the terms and conditions of the policy.

9. Considering the oral as well as documentary evidence on record, the learned Presiding Officer has allowed the petition partly.

10. I have heard the arguments of Mr. E. Afonso, the learned Counsel appearing for the appellant. None present for the original claimants/respondents no.1 to 3. Also heard the arguments of Mr. J.P. Mulgaonkar, the learned Counsel appearing for original respondents no.1 & 2/respondents no.4 & 5. With the help of the learned Counsel appearing for the respective parties, I have gone through the entire evidence on record. Considering the evidence on record and upon hearing both the sides following issues arise for my determination:

(i) Whether the respondent no.3/appellant proves that the respondent no.2 committed breach of the terms and conditions of the policy?	No
(ii) What Order?	The appeal is dismissed with costs.

11. During the course of the arguments, Mr. E. Afonso, the learned Counsel appearing for respondents no.3/appellant has concentrated his arguments that respondent no.2 has committed breach of the terms and conditions of the policy, and hence, obviously there is no dispute about

the death of the deceased in the accident, the negligence as determined by the learned Presiding Officer. Hence to resolve and determine the short controversy, it is material to refer the contents of the written statement of the respondent no.3.

12. In para no.1 of the written statement, it is contended by respondent no.3 that the liability under the aforesaid policy of insurance for purported accident on 11/09/2006 is governed by its terms and conditions and relevant provisions and exceptions of the Motor Vehicles Act, 1988. It is further specifically contended that respondent no.1 was not licenced to drive the said vehicle and there has been breach of the policy conditions excluding driving by any person who is not duly licenced to drive the same. Hence, respondent no.3 would not be liable to indemnify the claimants and, consequently, not liable to pay any compensation. The rest of the contents of the written statement are not relevant to determine the material controversy. From the contents of the written statement nowhere it is specifically contended by the respondent no.3 that there was no pillion rider on the scooter driven by the respondent no.1 neither it is contended that pillion rider sitting on the scooter was not holding a driving licence and he was not the instructor.

13. During the course of the arguments, Mr. E. Afonso, the learned Counsel for the appellant has argued that at the relevant time of the accident the respondent no.1 driver of the scooter was holding learner's licence and, therefore, as per the Motor Vehicles Rules such person is authorised to drive the vehicle only in presence of the person accompanying with him holding a permanent driving licence. According to Mr. Afonso, the claimants have failed to establish that there was a pillion rider on the vehicle and alternatively if at all the respondent no.2 was the pillion rider, the claimants have failed to establish that the respondent no.2 was holding the driving licence and is competent to give the instructions.

14. As against this, Mr. J.P. Mulgaonkar, the learned Counsel for respondents no.4 & 5 has specifically submitted before this Court that there is no specific pleading that the respondent no.2 was not holding driving licence nor it is contended by the respondent no.3 that there was no plate indicating letter 'L' on the scooter. According to Mr. Mulgaonkar, the respondent no.2 was the owner of the vehicle as well as pillion rider and he was holding the driving licence. During the oral evidence of the respondents no.1 & 2 they have produced a learner's licence/a licence, respectively and those licences were admitted in the

evidence and marked and exhibited.

15. During the course of arguments Mr. Afonso has not disputed this position. Hence, looking to the above situation, it appears that at the relevant time of the accident respondent no.1 was holding learning licence and respondent no.2, pillion rider was holding a driving licence.

16. When the respondent no.3 came with the case that the insured had committed breach of the terms and conditions of the policy then it is for the respondent no.3 to plead specifically the certain act of the breach of the terms and conditions of the policy and it is for the respondent no.3 to prove it by leading cogent evidence. The averments in the contents of the respondent no.3 regarding breach of the terms and conditions of the policy are in general nature.

17. I have gone through the oral evidence of the witness of respondent no.3 who deposed at Exhibit 63 and has stated about the requirement about Rule 3 of the Central Motor Vehicles Rules and has deposed that respondent no.1 was riding the said vehicle in violation of Rule 3 of the Central Motor Vehicles Rules. The rider of the scooter is required to be accompanied by the instructor duly licensed and such instructor should

sit in such a position to control or stop the vehicle. He further deposed that respondent no.1 was not accompanied by any instructor holding an effective driving licence to drive the vehicle. There was no 'L' plate displayed on the vehicle at the time of the accident. The oral evidence of this witness is without specific pleadings of respondent no.3 to that effect. This witness being the Branch Manager of the Insurance Company has deposed about the requirement of the Rule 3 of the Central Motor Vehicles Rules, who has no personal knowledge about the fact of the accident, whether the respondent no.2 was holding driving licence or otherwise whether the 'L' plate was displayed or otherwise.

18. In such circumstances I am of the opinion that respondent no.3/Insurance Company has failed to establish that there was breach of the terms and conditions of the policy on the part of respondent no.2. Mr. E. Afonso the learned Advocate appearing for the appellant has relied upon the following authorities:

1	***(2004) 8 SCC 667***	***Pramod Kumar Agrawal & Anr. V/s Mushtari Begum (SMT) & Ors.***
2	***(2007) 10 SCC 650***	***Ishwar Chandra & Ors. V/s Oriental Insurance Co. Ltd. & Ors.***
3	***(2008) 8 SCC 165***	***Ram Babu Tiwari V/s United Insurance Company Ltd. & Ors.***

4	***Judgment of Delhi High Court***	***Jeet Singh V/s National Insurance Co. Ltd.***

19. I have gone through the facts and observations of the above cited authorities. The said observations are relating to the breach of the terms and conditions of the policy and the liability of the payment of compensation on such breach. Here in the present case, basically the Insurance Company failed to establish that there was breach of the terms and conditions of the policy. Hence observations of any of the above cited authorities are not applicable to the facts of the present case.

20. Consequently, there is no substance in the appeal. Hence, point no.1 is answered accordingly. The above First Appeal is dismissed with costs.

K.L. WADANE, J.

NH/-