IN THE HIGH COURT OF BOMBAY AT GOA.

<u>First Appeal No. 144 of 2010</u>

Shri. Prashant Savlo Nagvekar,
r/o H. No.165 Bhaukai Waddo,
Mayem, Bicholim Goa.
(Driver of the TATA 407 Tempo
bearing No.GA-01-T-7387).
(REGISGTERED ADDRESS). .. **<u>APPELLANT</u>**.

<u>Versus</u>

1] Smt. Shilpa Shivaji Kumbhar,

2] Master Mayur Shivaji Kumbhar;

3] Master Yash Shivaji Kumbhar;

Both minor represented by their
mother and natural guardian,
Applicant no.1 Smt. Shilpa
Shivaji Kumbhar,
C/o Ashok Bhai, H.No.304,
Moloca Merces Ilhas, Goa.

4] National Insurance Co.Ltd.
101, Govinda Building,
M.G.Road, Panaji Goa.
(REGISTERED ADDRESSES). **<u>RESPONDENTS</u>**

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Mr. D.J. Pangam, Advocate for the appellant.
Mr. A. Afonso, Advocate for the respondents.

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CORAM : K.L. WADANE, J.
Date of reserving the Judgment : 15th September, 2015.
Date of pronouncing the Judgment : 19th October, 2015.

<u>JUDGMENT</u>:

1] Heard Mr. Pangam, learned Advocate for the appellant and Mr. A. Afonso, learned Advocate for the respondent no.4.

2] The present appeal is preferred by the original respondent no.1 against the judgment and the award passed by the Presiding Officer, Motor Accident Claims Tribunal, Panaji, in Claim Petition No.33/2007 dated 3rd June, 2010 by which, the Claim Petition of the petitioner is partly allowed and the compensation of Rs. 2,62,275/- is awarded to the claimants.

3] The parties are referred to their original status.

4] The widow and the minor sons of deceased Shivaji filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988, *inter alia contending* that the deceased Shivaji, aged about 38 years old, was a Transport Operator and working as a Transport Contractor with M/s. Gati Limited and was earning Rs.7000/- per month.

5] On 28.6.2006 the deceased was travelling in the Tata Tempo bearing Registration No.GA-01-T-7387 driven by the respondent no.1-appellant and was proceeding from Mapusa to Panaji. On reaching near Hero Honda Showroom, Opposite Vrundavan Nursing Institute, Porvorim Goa at about 14.45 hours, the vehicle i.e. Tata Tempo dashed against the road divider due to rash and negligent driving of the vehicle by the respondent no.1.

6] In the accident, deceased Shivaji sustained grievous injuries and succumbed to them before admission in G.M.C. Hospital, Bambolim. The deceased was the sole bread winner of their family, who had purchased the vehicle on a Hire-Purchase Agreement from Tata Finance and was paying Rs. 11,000/- per month from his earning. The respondent no.1 was driven the vehicle and the said vehicle was insured with respondent no.2. Therefore, both of them are jointly and severally liable to pay compensation to the petitioners.

7] The respondent no.1-appellant/driver opposed the petition and contended that he was a professional driver and possessed a badge and a valid Driving Licence to drive the vehicle. It was raining heavily on the said day. The spot of accident was barely 30 metres away from the Traffic Island on the National Highway No.17 from Porvorim towards Panaji. Speed breakers were installed at that point and the roads had become slippery on account of the rains. According to the respondent no.1, he was never rash and negligent while driving the vehicle.

8] The respondent no.2-Insurance Company took a plea that the claimants are the legal representatives of the deceased Shivaji, who himself was the owner of the vehicle, involved in the accident and, therefore, they are not entitled for the compensation. The Insurance Company further contended that the respondent no.1 was not holding effective driving licence and there was no valid permit or fitness certificate to the said Tempo. Thus, the Insurance Company is not responsible to pay the compensation.

9] Before the Trial Court on behalf of the petitioners, three witnesses were examined to prove the claim. As against this, the appellant deposed on his behalf and one Ashok Kumar is examined on behalf of the respondent no.2.

10] I have heard the arguments of Mr. Pangam, the learned Advocate appearing for the appellant and Mr. Afonso, the learned Advocate for the respondent no.4-Insurance Company. I have gone through the entire record and proceedings.

11] During the course of the arguments, Mr. Pangam, the learned Advocate, appearing for the appellant has argued that the liability of the payment of compensation by the respondent no.2-Insurance Company is exonerated by the learned Presiding Officer on the ground that the appellant was not holding a driving licence and the vehicle was not having permit and fitness certificate. Mr. Pangam has pointed out that the driving licence of the appellant is available on record at Page No. 61 of the record and proceedings and the Insurance Policy is at Exhibit 29 at Page no.51. According to Mr. Pangam, the Insurance Company was also responsible to pay the compensation. However, the learned Presiding Officer has wrongly exonerated the respondent no.2 from the liability to pay the compensation.

12] As against this, Mr. Afonso, the learned Advocate representing the Insurance Company has argued that the deceased himself was the owner of the vehicle and, therefore, he is not third party to the insured. Hence, the liability to pay the compensation is not covered under the Policy.

13] Considering the arguments advanced by both sides, a a limited controversy arises for my determination is:

> *"Whether the Insurance Company is liable to pay compensation to the petitioners?"*

14] Admittedly, the deceased was the owner of the vehicle involved in the accident and the learned Tribunal has held that the accident occurred due to negligence of the driver-respondent no.1. Admittedly, the claimants are the legal heirs of the deceased. In such circumstances, unless and until the risk of the insured is specifically covered in terms of the Insurance Policy, the Insurance Company cannot be held to be liable for payment of compensation.

15] I have gone through the contents of the Certificate of Insurance, which is at Exhibit 29 of the record and proceedings. No separate premium is paid by the owner of the vehicle covering the risk of the insured. Therefore, in absence of additional premium covering the risk of the insured, it cannot be said that the risk of the insured was also covered under the policy.

16] Mr. Afonso, the learned Advocate appearing for the respondent no.4 has relied upon the case of Dhanraj Vs. New India Assurance Co.Ltd., reported in 2005 ACJ 1 (SC), in which it is clearly held that the liability of the insurance company is only for the purpose of indemnifying the insured against the liabilities incurred towards a third party or in respect of damages to property. Therefore, since deceased himself was the insured as well as the owner of the vehicle, no amount of compensation could have been awarded to the claimants.

17] The learned counsel for the Insurance Company has further relied upon the case of Oriental Insurance Co. Ltd Vs. Sunita Rathi reported in 1998 ACJ 121 (SC) it has been held the liability of Insurance Company only for the purpose of indemnifying the insured against liabilities incurred towards third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also. It has been observed in the case of New India Assurance Co. Ltd. Vs. Prabha Devi and others reported in 2013ACJ 1382, which reads thus:

> *"10. In this case, it has not been shown that the insurance policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4,989 paid under the heading 'own damage', is for covering liability towards personal injury. Under the heading `own damage' , the words `premium' on vehicle and non-electrical accessories' appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance.*

18] Thus, In view of the clear-cut legal position, I do not think that the Insurance Company is responsible to pay the compensation. Therefore, the present appeal is liable to be dismissed. Accordingly, it is dismissed, with no order as to costs.

K.L.WADANE, J

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