

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

FIRST APPEAL NO. 477 OF 2013

1. Sangeeta w/o Samadhan Khadare
Age 23 years, Occ: Household
R/o Wangi Road, Parbhani,
Taluka 7 District: Parbhani
2. Ku. Pratika d/o Samadhan Khandare
Age 3years, Occ: Nil
Minor, under the guardianship of
real mother Sangeeta Samadhan
Khandare(Appellant No.1)
3. Shantabai w/o Shalikram Khandare, ... **Appellants**
Age 55 years, Occu: Household
R/o as above.

VERSUS

1. Jivan s/o Mahadev Gawai ... Respondent
Age 48 years, Occu: Business
R/o Adoli, Tq. & Distr. Washim
(Owner of Motorcycle No. MH37, C-
4644)
2. Iffco Tokio General Insurance
Co. Ltd.
8th Floor, 701-A, Shriram Shyam
Tower, Besides Nit Complex,
Kingsway, Sadar Bazar, nagpur.

Mr. Mr. Pavankumar S. Agrawal, Advocate for appellants,
Mr. S. R. Shirsat, Advocate for respondent No.1
Mr. V. N. Upadhye, Advocate for respondent No.2

CORAM : V. K. JADHAV, J.

DATE : 21st March, 2016

PER COURT :

1. Heard finally with consent of the parties at

admission stage.

2. Being aggrieved by the common judgment and award passed in MACP No.105 and 2007 and MACP No.106/2007 by the learned Chairman, Motor Accident Claims Tribunal, Parbhani dated 07.01.2010, the original claimants in MACP No.105/2007 have filed the present appeal only to the extent of exonerating respondent No.2/ Insurer by the Tribunal.

3. Brief facts giving rise to the present appeal are as follows:

i. On 01.11.2006 deceased Samadhan was riding motorcycle and one Mahendra was pillion rider on the said motorcycle, bearing registration No. MH-37-C-4644. On a way, a cow suddenly came in front of their motorcycle and in order to avoid dash, the deceased Samadhan turned his motorcycle, however, he has lost control over the motorcycle and consequently, the motorcycle dashed against a Babhool tree standing by the side of the road. Both of them died on the spot in the said incident.

ii. Legal representatives of deceased preferred two separate claim petitions for compensation under the

provisions of Section 163-A of the Motor Vehicles Act. Learned Chairman of the Motor Accident Clams Tribunal, Parbhani, by passing impugned judgment Award dated 07.01.2010, partly allowed both the claim petitions and thereby directed respondent No.1 owner to pay compensation as worked out in the judgment and award to the claimants. However, the learned Chairman of the Tribunal has dismissed the claims as against respondent No.2 Insurer in both the claim petitions. Hence this appeal by the original claimants only against the order of the Tribunal exonerating respondent No.2 Insurer.

4. Leaned counsel for the appellants/claimants submits that claimant No.1 Sangita is an illiterate lady and in her cross examination, she stated that she has produced driving licence of her husband on record. The learned counsel submits that on the basis of her admission in cross examination, the Tribunal has erroneously come to the conclusion that the driving licence is in possession of appellant/Claimant No.1 and since she has not produced it on record, an adverse inference could be drawn against her to the effect that either driving licence is not in existence or that driving licence possessed by the deceased did not authorize him to drive the vehicle at the relevant

time. Learned counsel submits that it is for the Insurer to prove before the Tribunal that there has been breach of the insurance policy to the effect that the deceased was not having valid driving licence to drive motorcycle at the time of accident. The learned counsel submits that the burden is on the Insurance company to prove the same and the Tribunal has committed mistake in exonerating respondent No.2 Insurer from the liability to pay compensation jointly and severally.

5. The leaned counsel for the appellants/claimants further submits that in a claim arising out of one and the same accident in respect of death of pillion rider, this Court, by order dated 27.10.2015, disposed of the first appeal No.494/2013 by directing respondent No.2 Insurer to pay the amount under the award and then recover the same from respondent No.1 owner. The learned counsel submits that the deceased Samadhan was having valid driving licence to drive motorcycle and the information supplied by the concerned RTO to the effect that deceased Samadhan was having valid driving licence to drive the vehicle is presently with the learned counsel.

6. Learned counsel for respondent No.1/owner submits

that though the burden is on the Insurer to prove breach of conditions of the policy, the said burden is not discharged by the Insurer and therefore, the impugned judgment and award exonerating the Insurer from the liability to pay compensation alongwith respondent no.1 is liable to be quashed and set aside.

7. Learned counsel for respondent No.2 Insurer submits that deceased Samadhan was not having valid and effective driving licence to drive motorcycle at the time of accident. The learned counsel submits that the appellant/claimant No.1 has admitted in her cross examination that she has produced driving licence of her husband before the Court. The learned counsel submits that if the driving licence is withheld for the reasons best known to the appellants/original claimants, then the Tribunal is justified in drawing adverse inference against the appellants/original claimants.

8. It is for the Insurer to prove that there has been breach of condition of the insurance policy to the effect that the deceased was not having valid and effective driving licence at the time of accident. The appellant/claimant No.1 is an illiterate lady. It appears that she has stated in a casual manner in her

cross examination that driving licence of her deceased husband is produced before the Court. It appears that the learned Chairman of the Tribunal, on that basis, drawn adverse inference against appellants/claimants and accordingly exonerated respondent No.2/Insurer from the liability of paying compensation jointly and severally alongwith with respondent No.1.

9. In the circumstance, this Court, by order dated 27.10.2015, while dealing with other claim arisen out of one and the same accident, directed the Insurer to pay compensation first and then recover the same from the respondent No.1 owner. Since no other points are raised in this Appeal, the present appeal is also disposed in the same manner. Hence following order:

O R D E R

- i. Appeal is hereby partly allowed.
- ii. The impugned judgment and award dated 07.01.2010 passed by the Chairman, Motor Accident Claims Tribunal, Parbhani in MACP No. 105/2007 is hereby modified to the following extent:

“Respondent No.2 Insurer shall pay the compensation amount under the award to the

claimants and then recover it from respondent No.1/ owner.

iii. Rest of the judgment and award passed by the learned Chairman, Motor Accident Claim Tribunal, Parbhani in MACP No.105/2007 stands confirmed.

iv. Appeal is accordingly disposed of.

v. In the circumstances, there shall be no order as to costs.

(V. K. JADHAV, J.)

JPC