IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 950 OF 2014

United India Insurance Company Ltd.
Through its Divisional manager,
Osmanpura, Aurangabad. … Appellant

Vs.

1. Zaheeda Begum w/o. Late Sk. Yusuf,
Age: 38 years, Occ: Household,
R/o Near Noorani Masjid, Panderpur,
Tq. & District Aurangabad.

2. Sk. Parvez S/o Late Sk. Yusuf,
Age : 20 years, Occu. Nil,
R/o. As above.

3. Sk. Ayan S/o Late Sk. Yusuf,
Age : 18 years, Occu. Nil,
R/o. As above.untitled folder

4. Ayesha Begum D/o Late Sk. Yusuf,
Age : 16 years, Occu. Nil,
R/o. As above.

5. Mazher S/o Late Sk. Yusuf,
Age : 14 years, Occu. Nil,
R/o. As above.

No. 4 & 5 being minors,
U/g of respondent no.1
Zaheeda Begum w/o. Late Sk. Yusuf

6. Mr. Ajit S/o. Moreshwar Save,
Age : Major, Occ: Business,
R/o. Anjali Complex, Near Anjali Cinema,
Khadkeshwar, Aurangabad.

7. Bajiro S/o R.N. Bhure,
Age : Major, Occ: Driver,
R/o. Anjali Complex, Near Anjali Cinema,
Khadkeshwar, Aurangabad. … Respondents

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Mr. Rohit Deshmukh h/f. Mr. Chapalgaonkar S.G, Advocate for Appellant
Mr. Deokate Mayur G., Advocate for the respondent nos. 1 to 5.
Mr. Satyajit Bora, Advocate for respondent no.6.

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CORAM : P.R. BORA, J.
DATE : 30-09-2016.

ORAL JUDGMENT :

1. The insurance company has filed the present appeal challenging the judgment and award passed in M.A.C.P. 178 of 2011 on 07/01/2014 by the Motor Accident Claims Tribunal at Aurangabad.

2. The aforesaid claim petition was filed by the present respondent nos. 1 to 5 (hereinafter referred to as the 'claimants') claiming compensation on account of the death of one Shaikh Yusuf who died in a vehicular accident having involvement of bus bearing registration no. MH-20-W-9389 owned by respondent no. 6 and insured with the appellant-insurance company. The claim so preferred by the claimants was resisted by the appellant insurance company on the ground that the driver of the offending bus was not holding a valid driving license and, as such, the insurance company was not liable to indemnify the insured . According to the appellant-insurance company, the insured committed breach of policy condition by allowing a person not holding a valid driving license to drive bus owned by him. In the circumstances, according to the appellant-insurance company, it should not have been held liable to

pay the amount of compensation. The insurance company had also raised the dispute about the quantum of compensation as claimed by the claimants. The tribunal, however, turned down the objection so raised by the insurance company and held it liable to pay the compensation of Rs. 05,46,500/- to the claimants jointly severally with the driver and the owner of the insured bus. Aggrieved by the order the insurance has filed the present appeal.

3. Mr. Deshmukh, learned counsel appearing for the appellant insurance company has pressed two grounds in exception to the impugned judgment.

4. In the present appeal the appellant insurance company has challenged the impugned award mainly on the ground that the tribunal has wrongly held the appellant liable to indemnify the insured that it has sufficiently proved breach of policy condition by the insured. The record shows that the appellant had sought leave of this court for leading additional evidence to substantiate the objection raised by it that the driver of the bus was not holding a valid driving license on the date of accident. The said application was allowed by this court and the appellant-insurance company was permitted to place on record the relevant documents. The concerned documents were called for by the appellant from the R.T.O. Beed, referring to the driving license number which was stated to be the driving license number of the driver of the insured

bus and accordingly the said papers were placed on record. It is also matter of record that the documents which came to be permitted on record by R.T.O. Beed pertaining to driving license no. 083/82 are evidencing that the said driving license was not in the name of the driver of the insured bus namely Bajirao Bhure but were in the name of one Venkat Shinde.

5. The record of the appeal further shows that, later on the original owner i.e. Respondent No.6, in the present appeal filed on record the original driving license of said Bajirao Bhure along with the xerox copies of the same, which was evidencing that said Bajirao Bhure was holding a valid driving license on the date of occurrence of the alleged accident. The xerox copy of the said driving license is existing on record. Today during the course of the hearing, original license is also shown to the court. It was also submitted by the learned counsel appearing for the parties that, on one previous date the said driving license was also brought to the notice to the then court and to the learned counsel for the insurance company. The subsequent developments further reveal that the copy of the said driving license was sent for further scrutiny by the insurance company whereupon it is noticed that the said Bajirao Bhure was holding a valid driving license on the date of accident.

6. In view of the fact that now there is no dispute that the

driver of the insured bus was holding valid driving license on the date of the accident the principle ground raised by the appellant insurance company in exception to the impugned award ceased to exist. The second ground which has been raised by the appellant-insurance company as about the quantum has also not impressed me for the reason that the tribunal has determined the amount of compensation by holding the income of the deceased on notional basis i.e. to the tune of Rs.3,000/- per month. Though, it was sought to be canvassed by the learned counsel appearing for the insurance company that, there was no evidence so as to add 30% of the income by way of future prospects and to determine the amount of compensation on the basis of that increased income.

7. Though, the appellant-insurance company had also raised certain objections as about the quantum of compensation as determined by the tribunal, I do not see any merit in the objections raised. It does not appear to me that the tribunal has committed any error in determining amount of compensation by holding the income of the deceased on the basis of notional income to the tune of Rs.3,000/- per month and enhancing the said income by 30% towards future prospects. Except the aforesaid two grounds no more grounds are pressed by the appellant so as to cause interference in the impugned judgment and award. The appeal, therefore, fails and is accordingly dismissed. However without any order as to cost. The claimants are permitted to withdraw the

amount of compensation, if any, deposited by the insurance company in this court in terms and proportion as indicated in the impugned award if not already withdrawn.

(P.R. BORA)
JUDGE

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