IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2896 of 2015

ICICI Lombard General
Insurance Company Ltd.,
Through it's Legal
Manager at Adalat Road,
Aurangabad.

...APPELLANT
(Ori.Respondent no.2)

VERSUS

1. Mainuddin s/o Nahnusab Shaikh,
Age 53 yrs. Occ. Labour at present nil
r/o Hadoli Tq.Nilanga,
at present r/o Sambhaji Nagar,
Latur.

...ORI.CLAIMANT

2. Balaji Manohar Mane,
Age 49 yrs occ. Agri. And Business
r/o Hadoli, Tq.Nilnga,
Dist.Latur.

...RESPONDENTS
(Ori.Resp.No.1)

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Mr. A.G.Choudhari, Advocate for the appellant.
Mr. R.P.Adgaonkar, Advocate for respondent no.1.
Mr. V.B.Jadhav, Adv., for respondent no.2.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 31/3/2016

Date of pronouncing judgment: 22/4/2016

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JUDGMENT:

1. The judgment and award passed in MACP No.17/2011, by the Motor Accident Claims Tribunal (hereinafter referred to as `the Tribunal'), at Nilanga, is questioned in the present appeal by respondent no.2 Insurance Company therein.

2. Present respondent no.1 had filed the aforesaid claim petition claiming compensation on account of the injuries caused to him and the consequent permanent disablement incurred by him because of the said injuries in a motor accident happened on 22nd December, 2009, having involvement of a tractor bearing registration No.MH-24-D-5265 owned by present respondent no.2 and insured with the present appellant claiming compensation of Rs.1,00,000/- (Rs. one lac). Respondent no.1 is, hereinafter, referred to as the claimant. It was the contention of the claimant before the Tribunal that the aforesaid tractor gave dash to him and in an accident so happened, he sustained several injuries including fractures. The claimant had alleged that the accident in question

happened because of rash and negligent driving of the driver of the said tractor. It was the further contention of the claimant that he was required to spend huge amount on his treatment and he suffered 73 per cent disablement because of the injuries caused to him in the alleged accident. It was the further contention of the claimant that because of the injuries caused to him, and the disablement incurred by him, he has totally lost his earning capacity. The claimant had assessed the amount of compensation to the tune of Rs.8,25,000/-, however, he restricted his claim for Rs.1,00,000/- (Rs.one lac) for payment of Court fees.

3. The claim was proceeded ex parte against respondent no.1 i.e. the owner of the tractor. Respondent no.2 i.e. the present appellant did resist the petition on several grounds. It was the contention of the appellant / respondent no.1 that the driver of the offending tractor was not holding a valid driving license on the date of the accident. Further, an objection was also raised by appellant / respondent no.1 that the offending tractor was being used at the relevant time for commercial purpose. According to respondent no.1 Insurance Company, the owner of the tractor had thus committed breach of the policy conditions by using the tractor for commercial

purpose and by allowing a person not holding valid driving license to drive the tractor. Respondent no.1 had also disputed the percentage of disablement incurred by the claimant and the medical expenses allegedly incurred by him.

4. The claimant deposed before the Tribunal and examined two more witnesses in order to support the contentions raised by him in his petition. The claimant examined an employee from M/s Alpha Super Speciality, Latur, to prove the medical expenses incurred by him and also adduced evidence of Dr.Sudhakar Gulve to prove the nature of injuries caused to him and the permanent disablement incurred by him because of the said injuries. Respondent no.2 Insurance company had also examined its Legal Officer, namely, Ravi Dilip Nalawade to substantiate the contentions raised in its written statement. Learned Tribunal, after having assessed the oral and documentary evidence brought before it, partly allowed the claim petition and held the claimant entitled to receive the compensation to the tune of Rs.1,70,000/- jointly and severally from the owner and insurer of the tractor i.e. respondent no.1 and appellant herein.

5. Aggrieved by the said judgment and award, the

Insurance company has filed the present appeal. Shri A.G.Choudhari, learned Counsel appearing for the appellant, submitted that the learned Tribunal has grossly erred in recording a finding that the Insurance Company has failed in proving the breach of the terms and conditions of the Insurance policy by the insurer. Learned Counsel further submitted that the learned Tribunal has failed in considering that the Insurance Company had issued notice to the insured under Section 134(c) of the Motor Vehicles Act calling upon the insured to furnish necessary documents and information. Learned Counsel further submitted that from the evidence on record it is clearly established that the offending tractor was being used at the relevant time for commercial purpose and, as such, the Insurance Company was not liable to indemnify the insured. In order to substantiate his arguments, learned Counsel has relied upon the judgment of the Honourable Apex Court in the matter of **National Insurance Co.Ltd Vs. Swaran Singh and ors (AIR 2004 SC 1531**) and in the case of **Oriental Insurance Company Ltd. Vs. Brij Mohan ((2007) 7 SCC 56).**

6. Shri R.P. Adgaonkar, learned counsel for respondent no.1, i.e. original claimant, supported the impugned judgment

and award. Learned Counsel submitted that, in any case, the Insurance Company was liable to pay the compensation to the claimant. Learned Counsel relied upon the judgment of the Honourable Apex Court in the case of **Pepsu Road Transport Corporation Vs. National Insurance Company ((2013) 10 SCC 217)**. Shri Jadhav, learned Counsel appearing for respondent no.2 also supported the impugned judgment and award and submitted that no interference is called for in the said judgment and award.

7. The appellant has challenged the impugned judgment and award mainly on the ground that since owner of the offending tractor had committed breach of the policy conditions, the appellant Insurance Company was not liable to indemnify the insured and as such, the Tribunal ought not have held the Insurance Company jointly and severally liable to pay the amount of compensation to the claimant. According to the appellant, breach of the policy conditions allegedly committed by the Insurer was on two counts; first, that the driver of the offending tractor was not holding valid driving license on the date of the accident and the second that the offending tractor was being used at the relevant time for the commercial purpose when the policy was purchased stating the use of the said

tractor for agricultural purpose.

8. It was sought to be canvassed by Shri A.G.Choudhari, learned Counsel appearing for the appellant Insurance Company that the driver of the offending tractor was prosecuted in relation to the accident in question for an offense under Section 3/181 of the Motor Vehicles Act along with the other I.P.C. offenses which means that he was not holding valid driving license at the relevant time. As such, according to the learned Counsel, no other proof was required to prove that the driver of the offending tractor was not holding valid driving license at the relevant time and the onus was on the owner of the tractor to prove that his tractor was being driven by a person having valid driving license in his name. As was submitted by Shri Choudhari, appellant insurance Company had duly issued notice to the owner of the tractor under Section 134(c) of the Motor Vehicles Act to produce all relevant documents and since the owner of the tractor did not produce the same, adverse inference was liable to be drawn against the owner of the tractor and no liability could have been fastened against the appellant insurance company.

9. However, if the evidence before the Tribunal is

perused, it reveals that the appellant Insurance Company had failed in proving that the notice allegedly sent by it to the owner of the tractor calling upon him to produce on record the relevant documents was, in fact, served on him. What is filed on record by the appellant Insurance Company is the office copy of the said notice, however, there is no evidence on record to show that the said notice was served on the insurer. Shri Ravi Nalawade, Legal Officer, examined by the appellant Insurance Company before the Tribunal has admitted in his cross examination that there was no documentary evidence on record to show that the notice to insured was sent by Registered Post Acknowledgment Due nor there was an acknowledgment on record to show that the notice was duly served on the insured. In the circumstances, the learned Tribunal has rightly recorded conclusion that merely because the driver of the offending tractor was also prosecuted for an offense under Section 3/181 of the Motor Vehicles Act, no such conclusion can be drawn that the driver of the offending tractor was not holding valid and effective license on the date of the accident. The Tribunal has further rightly held that the insurance company has failed in proving that any notice was served upon the owner of the tractor calling upon him to furnish relevant documents on record. I do not see that the Tribunal has committed an error in recording the finding as above.

In so far as the other objection raised by the appellant that the vehicle was being used for commercial purpose is concerned, as observed by the learned Tribunal in paragraph no.14 of its judgment, the evidence of the witness examined by the Insurance Company before the Tribunal is totally silent on the point. The Insurance Company has thus failed in proving that the offending tractor was being used at the relevant time for commercial purpose. The Tribunal has further discussed as to how the contention raised by the Insurance Company cannot be accepted that the vehicle was being used for commercial purpose. It appears to me that the reasons noted therefor by the Tribunal are sound and do not require any interference. The observations made and the conclusions recorded in the judgment relied upon by the learned Counsel for the appellant do not in any way support the contentions raised by the appellant in the facts of the present case.

10. After having considered the material on record, it does not appear to me that any interference is required in the impugned judgment and award. The appeal is devoid of any substance. In the result, following order:

ORDER

a) The First Appeal is dismissed with costs.

(P.R.BORA)
JUDGE

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AGP/2896-15fa