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

FIRST APPEAL NO. 1282 OF 2013

National Insurance Co. Ltd.
Trhough it's Divisional Manager,
Aurangabad Divisional Office,
Hazari Chembers, Station Road,
Aurangabad. .. APPELLANT
(Orignal Opp.No.2)

VERSUS

1. Tatyaba Balaji Dange
Age: 53 years, Occ: Service & Dairy
R/o Dahegaon, Tal. Rahata,
Dist. Ahmednagar. ..Respondent No.1
(Ori. Claimant)

2. Vishnu Bansilal Sarda
Age: 50 years, Occ: Household,
R/o Sada Galli, Ahmednagar,
Dist. Ahmednagar. ..Respondent No.2
(Orig. Opp. No.1)

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Mr. Atul B. Gatne,Advocate for Appellant;
Mr. S.S. Chapalgaonkar, Advocate for Respondent No.2

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CORAM : P.R. BORA, J.
Dated: April 22, 2016

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ORAL JUDGMENT :-

1) With consent of the parties, present appeal is taken up for final hearing at admission stage.

2) The only exception taken in the present appeal to the Judgment and Award is that, the Tribunal has not considered the objection raised by the appellant / Insurance Company that, driver of the offending Maroti van was not holding a valid and effective driving license on the date of accident.

3) Mr. A. B. Gatne, learned Counsel appearing for the appellant / Insurance Company brought to my notice that, in para 10 of its written statement, the appellant / Insurance Company had raised a specific objection in that regard and as such, in fact, the Tribunal was supposed to

frame an issue in that regard. Learned Counsel submitted that, even if, specific issue was not framed, the Tribunal ought to have taken in account the defence so raised by the Insurance Company while determining its liability to pay compensation. Learned Counsel further submitted that, in order to substantiate the defence raised in its written statement, the Insurance Company had examined the witness by name Avinash Manohar Ganorkar, an employee from the office of R.T.O. Ahmednagar, however, learned Tribunal has completely ignored the said evidence while holding the Insurance Company liable for paying the amount of compensation jointly or severally with the owner of the vehicle. Learned Counsel submitted that, in such circumstances, matter needs to be remanded back to the Tribunal so as to decide the said aspect by giving opportunity to the parties to adduce any further evidence if they so desire.

4) Mr. Chapalgaonkar, learned Counsel appearing for opponent No.1 i.e. owner of the vehicle was fair in submitting that, the Tribunal ought to have framed a specific issue in view of the objection raised by the Insurance Company in respect of the driving license of the driver of the offending vehicle Maroti van.

5) Perusal of the written statement by the appellant Insurance Company before the Tribunal shows that, it had raised a specific objection that, the driver of the

offending Maroti van was not holding a valid and effective driving license on the date of accident. The Insurance Company has then raised a further plea that, since the owner of the Maroti van had committed breach of policy condition by allowing the person not holding a valid driving license to drive his Martoti van, the Insurance Company was exonerated from its liability to indemnify the insured. It is further not in dispute that, the Insurance Company examined the witness by name Avinash Manohar Ganorkar, an employee from the office of R.T.O. Ahmednagar to substantiate its defence in respect of not holding a valid driving license by the driver of the offending Maroti van. The learned Tribunal has admittedly not framed any issue though there was a specific objection raised by the Insurance Company about the non holding of the valid driving license on the date of accident by the driver of the offending Maroti van. The Tribunal has further not even referred to the evidence of the witness examined by the Insurance Company on the said point. It was obligatory on the part of the Tribunal to frame the issue in view of the defence taken by the Insurance Company and to decide the same. Even if it is accepted that, the Insurance Company was liable to pay the amount of compensation to the victim of the accident, he being a third party framing of the issue on the point and its adjudication was must so as to decide the inter-say liability between the owner and the offending Maroti van and the Insurance Company.

6) In the above circumstances, it appears necessary to remit back the matter to the Tribunal with a direction that, it shall frame a specific issue in respect of the objection raised by the Insurance Company about non holding of the valid driving license on the date of the accident by the driver of the offending Maroti van, and whether it amounts to a breach of policy conditions by the insured, and decide the same by giving due opportunity to the Insurance Company as well as the insured to adduce the necessary oral and documentary evidence in support of their respective contentions. Needless to state that, on the basis of the finding, which may be recorded by the Tribunal on the aforesaid issue, the Tribunal may suitably modify the order and may pass further order, if any. It is ordered accordingly.

The Record and Proceedings be sent back to the Tribunal forthwith. After receiving the record, the Tribunal shall expeditiously complete the adjudication on the aforesaid issue and pass the necessary orders expeditiously, preferably within four months.

7) The appeal is allowed in the aforesaid terms. Pending Civil Application stands disposed of.

(P.R. BORA)
JUDGE

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S.P.Rane