

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

FIRST APPEAL NO. 1300 OF 2014

SHAIKH SADIK SHAIKH SALIM  
VERSUS  
THE NEW INDIA ASSURANCE COMPANY LTD. AND OTHERS

...  
Advocate for Appellant: Mr. Salunke V. D.  
Advocate for Respondent No.1: Mr. A.S. Usmanpurkar  
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**CORAM : V. K. JADHAV, J.**  
**DATED : 5<sup>th</sup> APRIL, 2016**

**PER COURT:-**

1. Being aggrieved by the judgment and award dated 3.9.2010, passed by the learned Member, M.A.C.T. Jalgaon, in M.A.C.P. No. 122 of 2002, the original respondent No.2/truck owner, preferred this appeal.

2. Brief facts, giving rise to the present appeal, are as follows:-

- a) On 12.11.2001, the claimant alongwith his brother were grazing their sheep by the side of road, near village Jalgaon (Kd) Shivar. At that time, one truck bearing registration No. MTG 4994 came from Nandgaon side and ran over the same on the sheep and accident had taken place. In consequence of which, 33 sheep died on the spot whereas 18 sheep got injured which also died while undergoing treatment. The accident has occurred due to rash and negligent driving of the

driver of truck i.e. original respondent No.1. The claimant, who is owner of the said sheep, preferred claim petition before the M.A.C.T. Jalgaon for grant of compensation.

- b) Respondent Nos. 1 and 2 i.e. owner and driver of the vehicle, involved in the accident, had failed to contest the claim petition and the claim petition proceeded ex parte against them. Respondent No.3 insurer has strongly resisted the claim petition by filing written statement at Exh.18. Respondent No.3 insurer has raised statutory defence that on the date of accident the respondent No.1, who was driving the vehicle, was not having valid and effective driving licence and thus there has been breach of condition of insurance policy.
- c) The learned Member of the Tribunal by its impugned judgment and order dated 3.9.2010, partly allowed the claim petition with proportionate costs and thereby directed the original respondent No.2, truck owner, to pay amount of Rs.74,300/- to the claimant alongwith interest @ 7.5% p.a. from the date of petition till realization of full amount. The claim petition, as against respondent No.3 insurer, came to be dismissed. Being aggrieved by the same, original respondent No.2-original owner, has preferred this appeal.

3. Learned counsel for the appellant submits that at the time of accident the claimant was grazing near about 700 to 800 sheep by the side of road and thus in that way he himself has contributed the negligence. The Tribunal has erroneously exonerated the respondent-insurer. Learned counsel submits that respondent No.1 driver was having valid and effective driving licence, however, on the date of accident, it was expired. But subsequently, respondent No.1 driver has renewed his licence. Learned counsel submits that it is not the case that respondent No.1 driver was not having valid and effective driving licence at all. Learned counsel thus submits that in view of this, respondent No.3 insurer is liable to pay the compensation alongwith the appellant.

4. Learned counsel for respondent No.3 insurer submits that the driver of the truck was holding licence for the period from 28.7.1992 to 13.1.2001. The accident took place on 12.11.2001. Learned counsel submits that the licence of respondent No.1 was expired 10 months prior to the accident and it was renewed two months after the accident took place. Learned counsel submits that it is thus proved that on the date of accident, respondent No.1 was not holding any valid or effective licence to drive the vehicle bearing registration No. MTG-4994. Learned counsel further submits that there has been breach of condition of insurance policy and therefore, the respondent-insurer is not liable to

pay the compensation. Learned counsel submits that the tribunal has rightly exonerated respondent No.3 insurer. Learned counsel submits that there is no substance in the appeal and thus appeal is liable to be dismissed with costs.

5. I do not find any substance in the submissions of learned counsel for the appellant that the claimant has contributed negligence in grazing the sheep by the side of road. It is not disputed that the motor vehicle should be driven in moderate speed as well as with great care and caution, if sheep are grazing by the side of road or any village is ahead of the road. So far as the sheep are concerned, they are not pet animals and obviously had no control over them. By any stretch of imagination, it cannot be said that by grazing the sheep by the side of road, the claimant himself has contributed the negligence. Respondent-driver of the truck had driven the vehicle in such a manner that he could not control it even though 22 sheep crushed under the tyre and died on the spot and near about 18 sheep severely injured in the accident and succumbed to the injuries while undergoing the treatment.

6. Learned counsel for the respondent-insurer has rightly pointed out that on the date of accident, original respondent No.1 driver was not holding valid and effective driving licence. However, it is true that respondent No.1 was having driving licence prior to the accident and it is not the case that he was not having driving licence at all. In ordinary

circumstances, I would have directed the respondent-insurer to pay the amount of compensation and recover it from the appellant-owner, however, in the case in hand, the appellant owner has deposited entire amount before this court at the time of filing this appeal. In view of this, it will be futile exercise to direct respondent-insurer to pay the compensation amount and then to recover it from the appellant-owner. I do not find any substance in the appeal and the appeal is liable to be dismissed. Hence, the following order:-

#### O R D E R

- I. The appeal is hereby dismissed with proportionate costs.
- II. In response to the order passed by this court, the appellant owner has deposited the amount alongwith statutory deposit before this Court, the respondent-claimant is permitted to withdraw the said amount.
- III. Appeal is accordingly dismissed.

**( V. K. JADHAV, J.)**

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