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

FIRST APPEAL NO.: 186 OF 2011

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New India Assurance Company LOtd.,
Aurangabad, through its Divisional
Manager, Adalat Road, Aurangabad. ... **APPELLANT**
[ORIG.RESPDT.NO.3]

VERSUS

1. Sameenabee W/o Sk. Faiyaz,
   Age: 33 years, Occu. Household,
   R/o Ganesh Nagar, Padegaon,
   Taluka and District Aurangabad.

2. Sarfaraz S/o Sk. Faiyaz,
   Age: 5 years (Minor)
   U/g of real mother
   Respondent No.1.

3. Reshma D/o Sk. Gani,
   Age: 10 years, Occu. Education.

4. Sk. Gani S/o Sk. Suleman,
   Age: 68 years, Occu: Labour,
   R/o as above.

5. Intiyasbee W/o Sk. Gani.
   Age: 58 years, Occu: Household,
   R/o as above.

6. Lalchand S/o Dagadu Brahmakar,
   Age: 35 years, Occu: Business,
   R/o as above. ... **RESPONDENTS**
   [NOS.1 TO 5 ORIG. CLAIMANTS, NOS.6 & 7 ORIG.RESPDT. NOS.1 AND 2]

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Mr. S. G. Chapalgaonkar, Advocate for the Appellant.
Mr. Amol P. Khedkar, Advocate for Respondent Nos.1 to 3 & 5.

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CORAM:- T. V. NALAWADE, J.
DATED:- 24th FEBRUARY, 2016.

ORAL JUDGMENT:

1. The appeal is filed by insurance company to challenge the judgment and Award of Claim Petition No.682 of 2007 which was pending before the Claims Tribunal, Aurangabad. Heard learned counsel for the Insurance company and learned counsel for the original claimants. Nobody has turned up for owner of the vehicle.

2. The challenge of the insurance company is of limited nature. It is the case of the insurance company that the Respondent No.1, driver of offending vehicle was not holding valid and effective driving licence on the date of the accident i.e. on 9th May, 2005 and so it is not bound to indemnify the owner.

3. Before the Tribunal, the insurance company had taken such defence in the written statement. The record like Xerox copy of driving licence of Respondent No.1 was produced on record at Exhibit-44. Though some portion is not legible it can be said that the licence was issued on 27th August, 1997 and so it was valid for the period of about three years, as per the procedure followed at the relevant time. So, it was valid up to 26th August, 2000. No

endorsement showing that the licence was renewed after 26th August, 2000 is legible or appearing on Exhibit-44.

4. In the appeal, for clarification, the Appellant insurance company has produced certificate issued by R.T.O. office which is to the effect that the licence in respect of the aforesaid period was given to the Respondent No.1. This certificate was issued on 26th April, 2010. Though proper procedure was not followed for production of additional evidence in appeal, it can be said that before the Tribunal also there was no record to show that on the date of the accident Respondent No.1 was holding valid and effective driving licence. Inspite of this circumstance, the Tribunal has held that the insurance company failed to prove the breach of conditions of policy, after considering the same document, Exhibit-44.

5. The aforesaid circumstances and the record are sufficient to prove on preponderance of probability that the Respondent No.1 was not holding valid and effective licence at the relevant time. Respondent No.1 had not contested the matter by filing written statement. Similarly, Respondent No.2 had not contested the matter. In view of these circumstances, this Court holds that the Tribunal

ought to have held that on the relevant date the Respondent No.1 was not holding valid and effective licence.

6. Learned counsel for the original claimants submitted that even if the breach of the terms and conditions of the policy is proved, as the deceased was third party, the insurance company must be made liable to pay first and it can be allowed to recover the amount from the owner of the vehicle. On this point, reliance is placed on the case reported as ***2013 (3) T.A.C. 393 (S.C.) [S. Iyyapan V/s M/s. United India Insurance Company Ltd. and Another].*** Though it could have been said that the conscious breach ought to have been proved by the insurance company, when the licence of aforesaid nature is on the record and as the owner has not contested the matter and there is nothing in rebuttal the decision needs to be given against the owner of the vehicle.

7. In the result, only to give right to the insurance company to recover the amount from the owner of the vehicle, following order is made:

(i) Appeal is allowed. Judgment and Award of the

Tribunal is modified to give right to the insurance company to recover the compensation amount from the owner who is Respondent no.2 in this appeal with interest at the same rate which the insurance company is made to pay. Award is to be modified accordingly and by using this Award the insurance company will be entitled to recover the amount from the owner.

(ii) The amount, which is awarded to claimant No.2 Shaikh Gani is to be paid to his widow Smt. Intiyasbi Shaikh Gani and on the record Shaikh Gani is to be shown as dead.

8. In view of final disposal of the appeal itself, nothing further survives in the civil application No.12723 of 2010 which is filed for stay. The application stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dated:24/02/2016.
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