IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 2993 of 2015

Bajaj Allianz General Insurance Co. Ltd.,
Through its Branch Manager,
G.E. Plaza, Airport Road, D.G.P House,
Ground Floor, 88-C, Old Prabhadevi Road,
Airport Road, Yerwada, Pune. .. Appellant
(Orig. Resp. No.2)

Versus

1. Tanuja w/o Nandkumar Pawar (Jamge
Age : 26 years, Occu.: Household,
R/o. Turori, Tq. Omerga,
Dist. Osmanabad.

2. Neha D/o Nandkumar Pawar (Jamge)
Age : 10 months, (Minor)

3. Nikita D/o Nandkumar Pawar (Jagmge)
Age : 10 months, (Minor)
R/o. Guloli, Tq. Aland, Dist. Gulbarga.
Resp. Nos. 2 & 3 are minor u/g of
their natural mother i.e. Resp. no.1.

4. Dropadi Bhim Pawar (Jamge),
Age : 49 years, Occu. Household,
R/o. as above.

5. Bhim Gopal Pawar (Jamge)
Age : 53 years, Occu.: Agriculture,
R/o. as above. ..(Orig. Claimants)

6. Ankush Dnyanoba Dhumal,
Age : 35 years, Occu. Busness,
R/o. Turori, Omerga,
Dist. Osmanabad. ... Respondents
(Orig. Resp. No.1)

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Mr. Uday Malte, Advocate for Appellant
Mr. B.L. Sagar Killarikar, Advocate for Respondent Nos. 1 to 5

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CORAM: P.R.BORA, J.

Dated : 31st March, 2016.

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JUDGMENT :

1) Admit. With the consent of the learned Counsel appearing for the parties, heard finally.

2) Appellant / Insurance Company has questioned in the present appeal the judgment and award passed on 28.04.2011 by the Motor Accident Claims Tribunal at Omerga in M.A.C.P. No. 26/2009.

3) Respondent No.1 to 5 herein had filed the aforesaid claim petition under section 166 of the Motor Vehicles Act (hereinafter referred to as 'the Act') seeking compensation on account of the accidental death of Nandkumar Pawar from the owner and insurer of the Truck alleged to be involved in the alleged accident. The learned Tribunal, after having assessed the evidence oral as well as documentary brought before it, partly allowed the claim petition with proportionate cost only against respondent no.1, however, passed the further order directing respondent No.2 Insurance Company at the first instance to deposit the amount of compensation to the tune of Rs.4,66,000/- along with interest thereon at the rate of 9% from the date of filing of the Claim Petition till its realization, with

liberty to recover the said amount from respondent no.1.

4) In the present appeal, it is the principle grievance raised by the Insurance Company that, the Tribunal has grossly erred in directing the Insurance Company to first deposit the amount of compensation and then to recover it from the owner of the vehicle. Shri U.S. Malte, learned Counsel appearing form the appellant / Insurance Company submitted that, the direction as aforesaid issued by the Tribunal is improper and illegal and the Tribunal was not possessing any power or authority to issue such direction. Learned Counsel further submitted that, when the Tribunal has recorded a clear finding that, Insurance Company has proved that, the owner did commit the breach of policy condition, no such direction could have been issued by the learned Tribunal. Learned Counsel further submitted that, pay and recover orders can only be passed by the Hon'ble Apex Court under its extra ordinary jurisdiction under article 142 of the Constitution of India, however, such power cannot be exercised by the Tribunal. In order to support the contentions raised by him, the learned Counsel has relied upon the following judgments:

(a) National Insurance Co. Ltd. V/s Parvathneni & another, reported in (2009) 8 SCC 785.

(b) United India Insurance Co. Ltd. V/s Anubai Gopichand Thakre & Ors., reported in Mh.L.J 2008 (1) 73.

(c) National Insurance Co. Ltd. V/s Zanak Jaypal Morasiya & Another, reported in 2015(1) Bom. C.R. 333.

(d) The Manager, United India Insurance Co Ltd. V/s Kamalabai Mukunda Kumare & Ors.,reported in 2010(O) BCI 89.

(e) Bhuwan Singh V/s M/s. Oriental Insurance Co. Ltd. & Anr., reported in AIR 2009 SC 2177.

5) Shri B.L. Sagar Patil, the learned counsel appearing for the original claimants / Respondent nos. 1 to 5 in the present appeal strongly resisted the submissions advanced by the learned Counsel for the appellant / Insurance Company. The learned Counsel submitted that, the Tribunal has passed just and legal order and was competent to issue the directions as are there in the impugned award. Learned Counsel further submitted that, not holding of valid driving license at the time of occurrence of the accident cannot be said to be a fundamental breach of the policy condition and in such circumstances, the Insurance Company cannot be absolved from its liability to indemnify the insurer to cover the risk of the third party. The learned Counsel further submitted that, from the material on record, it is quite clear that, earlier to the occurrence of accident the driver of the offending vehicle was holding a valid driving license and subsequently the same was renewed. According to the learned Counsel, thus it was not the case that the driver of the offending vehicle was never holding a valid driving license or

that he was disqualified from holding such driving license. In such circumstances, according to the learned Counsel, the order passed by the Tribunal is legal and proper and no interference is required in the said order. In order to support the contentions raised by him, the learned Counsel has relied upon the following judgments:

(a) Bajaj Allianz General Insurance Co. Ltd. V/s Ashwita Arvind Poll and ors., reported in 2015 (2) Bom.C.R. 359

(b) Divisional Manager V/s Vandana Prabhakar Gaigol and others, reported in 2015 (4) Bom. C.R. 588.

(c) Vasant V. Bugde V/s Vasant Raghunath Joshi & ors., reported in 2015 (2) Bom.C.R. 326.

6) Material on record in the instant case reveals that, though there was no renewal of the driving license of the driver of offending vehicle on the date of accident, subsequently the same was renewed. As has come on record through the evidence of the junior Clerk working in the R.T.O. office at Osmanabad, in the period prior to occurrence of the accident, the driver of the offending vehicle was holding a valid driving license and as mentioned here-in-above, subsequently the same was renewed. It is not the case of the appellant Insurance Company that, the said driver was disqualified from the driving the vehicle during the relevant period. It is also not the case of the Insurance Company that, not holding of the valid license by the driver of the offending vehicle has contributed to the cause of the

accident. In premise of the facts as above, relying upon the judgment of the Hon'ble Supreme Court in the case of **National Insurance Company V/s Swarnsingh and others, 2004(1) TAC. 321 (SC)**, the learned Tribunal has passed the order and has thereby directed the Insurance Company to satisfy the award at the first instance and thereafter recover the said amount from the Insured. In para 83 of the said judgment, the Hon'ble Apex Court has observed thus:

> "83. Sub-section (5) of Section 149 which imposes a liability on the insurer must also be given its full effect. The insurance company may not be liable to satisfy the decree and, therefore, its liability may be zero but it does not mean that it did not have initial liability at all. Thus, if the insurance company is made liable to pay any amount, it can recover the entire amount paid to the third party on behalf of the assured. If this interpretation is not given to the beneficent provisions of the Act having regard to its purport and object, we fail to see a situation where beneficent provisions can be given effect to.

7) In the instance case, admittedly, the insurance policy was in force on the date of accident. The insurer and the insured are bound by the conditions enumerated in the policy, if the insured violates any of the policy condition, the insurer may not

be liable to the insured, but the insurer is made statutorily liable to pay compensation to the third parties.

8) I have gone through the judgments relied upon by the learned Counsel for the appellant. The law laid down in none of the said judgments would apply to the facts of the present case.

9) In view of the law laid down by the Hon'ble Apex Court in the case of **Swarnsingh** (cited supra), it does not appear to me that, the Tribunal has committed any error in directing the Insurance Company to pay the amount of compensation to the claimants at the first instance and then to recover the said amount from the insured. The appeal filed by the Insurance Company is devoid of any substance and deserves to be dismissed and is accordingly dismissed. In the facts of the case, however, no order as to costs.

Pending Civil Application, if any, stands disposed of.

(P.R.Bora)
Judge

SPR