IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2722 OF 2011

1) New India Assurance Co.Ltd.
Aurangabad, Through its
Divisional Manager,
Adalat Road, Aurangabad. = **APPELLANT**
(Orig.Resp.1 & 4)

VERSUS

1) Onkar s/o Vishram Fegde
Age: 62 Yrs. Occ. Service,
R/o Pratibha Nagar,Varangaon,
Tq.Bhusawal, Dist.Jalgaon.

2) Pramila w/o Onkar Fegde
Age: 55 Yrs., occu. Household,
R/o as above.

3) M.D.Kaslam Mo.Chhora Mat.
4, St.Savta Marg, Near Victoria
Wy Bridge, Mustafa Bazar,
Mumbai-10.

4) Mohmad Arshad Shahid Aali,
Rashid Compound, G-4, Kosa
Thane, Dist. Thane.

(Appeal stood dismissed as
against Resp.Nos. 3 & 4
vide Court order dt.7.1.2014)= **RESPONDENTS**

Mr. MR Deshmukh, Advocate h/for Mr. SG Chapalgaonkar,
Advocate for Appellant;

Mr.GV Wani, Advocate for Respondent Nos. 1 & 2

CORAM : P.R.BORA, J.

DATE : 6th April,2016.

ORAL JUDGMENT :

1) In the present appeal, the Judgment and Award passed by Motor Accident Claims Tribunal, Jalgaon (for short the Tribunal) in Motor Accident Claim Petition No.120/2002 on19.07.2011 is challenged mainly on the ground that, though the Insurance Company has sufficiently proved that the driver of the offending vehicle was not holding valid and effective driving license on the date of accident, the Tribunal has illegally held the Insurance Company also liable to pay the amount of compensation to the claimants jointly and severally with the owner of the vehicle and to pay the compensation amount to the claimants at the first instance with liberty to recover the same from the insured.

2) The material on record reveals that, it was not the case that the driver of the offending vehicle was never holding any valid driving license to drive the heavy goods vehicle or that he was disqualified from holding such driving license at the relevant time. As has come on record, though the driver of the offending vehicle was holding driving license to drive heavy goods vehicle from 07.01.1991 its validity period was expired on 27.02.2000 and the same was not renewed till the date of accident i.e. 25.09.2000.

3) In view of the facts as above, and having regard to the law laid down by the Hon'ble Apex Court in the cases of **National Insurance Company V/s Swarnsingh and others, 2004(1) TAC. 321 (SC)** and **S. Iyyapan V/s United India Insurance Co. Ltd. and another, (2013) 7 Supreme Court Cases 62**, the objection so raised by the appellant Insurance Company in exception to the impugned Judgment and Award cannot be sustained.

4) As held by the Hon'ble Apex Court in the case of **Swarnsingh** (cited supra), "mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties". The Hon'ble Apex Court has further held that, "to avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time".

5) In the present case, neither such stand is taken, nor any evidence is adduced to prove that the insured was guilty of negligence and failed to exercise due care in the matter of fulfilling the conditions of the policy regarding the driving of the

vehicle by a duly licensed driver. The Insurance Company, therefore, cannot be discharged from the liability to the third party. It does not appear to me that, the learned Tribunal has committed any error in directing the appellant Insurance Company to first pay the amount of compensation to the original claimants and then to recover the said amount from the insured. The appeal is devoid of any substance. Hence, the following order:

ORDER

a) The appeal is dismissed.

b) No order as to costs.

(P.R.BORA)
JUDGE

SPR