IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1939 OF 2010

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SHAIKH SHERU SHAIKH HAMZA
age 26 years, Occ. Mason,
Resident of Peth Mohalla,
Parli Vaijnath, Tq. Parlivaijnath,
Dist. Beed. ..Appellant..

VERSUS

1. DNYANOBA ANGADRAO SHIRSAT
age major, Occ. Driver and Business,
Resident of Telghana, Tq. Ambajogai,
District Beed.

2. I.C.I.C.I. Lombard, Motor Insurance,
General Insurance Company,
Through its Branch Manager,
Adalat Road, Aurangabad. ....Respondents..

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Advocate for Appellant : Mrs A N Ansari
Advocate for Respondent 2 : Mr S G Chapalgaonkar
Respondent No.1 served absent.

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CORAM : V.K. JADHAV, J.
Dated: April 11, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and order passed by the learned Member, Motor Accident Claims Tribunal, Ambajogai dated 17.6.2010 in MACP No.7/2009 the original claimant has preferred this appeal to the extent of finding of the Tribunal

exonerating the Respondent No.2 Insurer from the liability to pay the compensation.

2. Learned counsel for the appellant submits that, the Respondent/insurer has failed to prove that there is breach of condition of the insurance policy. Learned counsel submits that, the Respondent-insurer has failed to prove that the driver of the vehicle involved in the accident was not having valid and effective driving licence to drive the vehicle at the time of accident. Learned counsel submits that, in the alternate, in view of the authoritative pronouncement of the Supreme Court in case of **S.Iyyapan Vs. United India Insurance Company Limited reported in 2013 (6) Mh.L.J. 1**, the Tribunal should have directed the Respondent-insurer to pay the compensation as per the award and then recover the same from the respondent owner of the vehicle.

3. Learned counsel for respondent No.2-insurer submits that, the Insurer has examined the witness Afroz Siddiqui at Exh.14. Learned counsel submits that

said Arfoz Siddiqui is working as a Senior Clerk in the RTO office of the concerned region and said witness has deposed before the Tribunal that respondent no.1 was not having valid and effective driving licence at the time of accident. Learned counsel submits that, in view of this, there has been breach of conditions of the policy and therefore, the respondent-insurer is not liable to pay the compensation. Learned counsel submits that, the Tribunal has rightly fastened the liability on respondent No.1 and dismissed the claim petition as against respondent no.2 insurer. Learned counsel submits that, no interference is required and thus the appeal is liable to be dismissed.

4. So far as the defence raised by the Respondent-insurer is concerned, the insurer has examined the witness from the RTO office of the region and said witness has deposed before the Tribunal that respondent no.1 was not having valid and effective driving licence at the time of accident. It is well settled that there is distinction between L.M.V. and Transport vehicle. A Transport vehicle may be a light vehicle but

for the said purpose a distinct licence is required to be obtained. I do not find any fault in the impugned judgment to fasten the liability against respondent no.1 owner.

5. The Supreme Court in case of S.Iyyapan (supra), relied upon by the learned counsel for the appellant-claimant in paragraph No.17 and 18 of the Judgment has made following observations :-

> 17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia

> on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy."

6. In view of the authoritative pronouncement of the Judgment by the Supreme Court, the Tribunal ought to have directed the respondent no.2 Insurer to satisfy the award passed as against respondent-owner and then recover the same from him.

7. In view of this, following order is passed.

ORDER

I. The appeal is hereby partly allowed.

II. The Judgment and Award passed by the learned Member, Motor Accident Claims Tribunal, Ambajogai dated 17.6.2010 in MACP No.7/2009 is hereby modified to the following effect :-

"The respondent No.2 – I.C.I.C.I. Lombard Motor Insurance General Insurance Company shall pay the amount as per the award to the claimant and recover the same from the respondent No.1-Owner Dnyanoba Angadrao Shirsath and for that purpose respondent No.2 Insurer is not required to initiate any independent proceeding."

III. Rest of the Judgment and Award passed by the Member, Motor Accident Claims Tribunal, Ambajogai dated 17.6.2010 in MACP No.7/2009 stands confirmed.

IV. Award be drawn up accordingly.

VI. First Appeal is disposed of.

VII. In the circumstances there shall be no order as to costs.

sd/-

(V.K. JADHAV, J.)

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