

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO. 81 OF 2010**

National Insurance Co. Ltd.,
Confraria Building, 2nd Floor, Jose
Falcao Road, Panaji-Goa. Appellant

Versus

1. Shri Sambhajirao Madhavrao
Rane, aged 38 years, service,
resident of H. No. 157,
Ranewada, Keri, Sattari-Goa.
2. Smt. Clara Louise D'Souza, H.
No.391, Near Holy Cross
Chapple, Gaunsawaddo, Mapusa,
Bardez-Goa.
3. Krishna Babu More, H. No. 223,
Gaowada, Velguem, Bicholim-Goa. Respondents

Shri Emerico Afonso, Advocate for the Appellant.

Shri Vivek Rodrigues, Advocate for Respondent No. 1.

Shri Jagannath J. Mulgaonkar, Advocate for
Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE:- 18th NOVEMBER, 2016

JUDGMENT:

The appellant-Insurance Company is challenging the judgment and award dated 19.07.2008 passed by the Motor Accident Claims Tribunal (Tribunal, for short), only on the ground of the alleged breach of policy condition, in as much as it is contended that the driver of the offending vehicle was not holding a valid and effective driving license.

2. The brief facts are that on 06.09.2005 at 14:30 hours, the claimant was a pillion rider on a motor cycle bearing no. GA-04-A-0219. The accident occurred near the gate of Goa Bagayatdar Co-operative Society at Sanquelim-Bicholim road. When the claimant and the rider of the motor cycle were coming out of the gate, one Tata mobile van bearing no. GA-01-Z-0833 came and dashed the motor cycle, as a result of which, the original claimant

sustained injuries, resulting into permanent disability. The respondent no.1-claimant filed a claims petition under Section 166 of the Motor Vehicles Act claiming a compensation of Rs. 2,00,000/-.

3. The claim petition was contested by the owner of the offending vehicle and the Insurance Company. The parties led evidence. The Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the offending vehicle. The Tribunal placed reliance on the decision of the Hon'ble Supreme Court in the case of **Ashok Gangadar Vs. Oriental Insurance, 1999 SC 3181** and came to the conclusion that there is no breach of policy conditions. In that view of the matter, the claim petition came to be partly allowed, granting compensation of Rs.1,56,000/- jointly and severally against the appellant and respondent no. 2 alongwith interest at the rate of 6% per annum from

the date of filing of the petition, till realisation, alongwith costs. Feeling aggrieved, the appellant is before this Court.

4. I have heard Shri Afonso, the learned Counsel for the appellant, Shri Rodrigues, the learned Counsel for the respondent no. 1 (claimant) and Shri Mulgaonkar, the learned Counsel for the respondent no. 2 (owner of the vehicle).

5. It is strenuously urged on behalf of the appellant that the driver of the offending vehicle was licensed to drive a vehicle classified as light motor vehicle (LMV). It is submitted that the driver was not licensed to drive a 'transport vehicle'. It is submitted that the offending vehicle was classified and registered as a transport vehicle. Strong reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Oriental Insurance Company Limited Vs. Angad Kol and Others,**

(2009) 11 SCC 356, in order to submit that two separate categories of licences are contemplated for driving a 'light motor vehicle' and a 'transport vehicle'. It is submitted that in such circumstances, the Insurance Company cannot be held liable. The learned Counsel in all fairness has alternatively submitted that this Court may direct that the appellant shall pay the compensation, subject to the right of recovery from the owner.

6. On the contrary, the learned Counsel for the respondent no. 2 has pointed out that the burden to prove that there was breach of policy conditions, lay on the appellant, which has not been discharged. The learned Counsel has pointed out the observations in para 26 of the impugned judgment, in order to submit that on facts, it is not established as to what type of licence the driver was holding. It is submitted that even otherwise, the alleged breach cannot be said to be a fundamental breach.

7. The learned Counsel for the respondent no. 1 has supported the impugned award.

8. On hearing the learned Counsel for the parties, I find that the appeal involves a short question, as to whether there is any breach of policy conditions as alleged. There cannot be any manner of dispute that at the relevant time when the award was passed, the judgment of the Hon'ble Apex Court in the case of **Ashok Gangadar** (supra) was holding the field. In the subsequent decision, in the case of **Angad Kol** (supra), the Hon'ble Apex Court has held that under Section 10 of the Motor Vehicles Act, there is a distinction between a 'light motor vehicle' and a 'transport vehicle' and although, a transport vehicle may be a light motor vehicle, but for the purpose of driving the same, a distinct licence is required to be obtained (see para 15 of the judgment). However, in order to succeed on any such ground, the Insurance Company

has to establish that the driver was not holding a driving licence to drive a 'transport vehicle'.

9. In the present case, the Tribunal from para 26 onwards has found that the type of licence has not been disclosed in any of the documents and in the absence of the same, it cannot be said that the defence of the appellant (respondent no. 3 before the Tribunal) has been established. The Tribunal has found and to my mind rightly so, that burden was on the appellant to establish breach of policy conditions on such a ground.

10. In my view, the appellant having failed to establish on facts, as to what type of licence the driver was holding, cannot succeed on the ground of breach of policy conditions. In that view of the matter, no case for interference is made out. Consequently, the appeal is dismissed, with no order as to costs.

The amount deposited before this Court alongwith interest if any, shall be paid to the respondent no. 1 on proper identification.

C. V. BHADANG, J.

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