IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.514 OF 2013

Mangal Balasaheb Parhad and Others ... Appellants
vs.
Bajaj Aliance General Insurance
Company Limited and Another ... Respondents

Mr. R.M. Haridas, for the Appellants.

Mr. M.M. Sathaye, for the Respondent-Insurance Company.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE : **12th FEBRUARY, 2016**

P.C.:

. Admit. The learned counsel for the Respondents waives service. By consent, the Appeal is heard finally and disposed of at the stage of admission.

2. In this Appeal, the judgment and award dated 18th March, 2010 passed by the Member, M.A.C.T., Niphad in M.A.C.P. No. 108 of 2008 allowing the claim and awarding the amount of Rs. 3,64,000/- towards compensation is challenged. The judgment and award is

challenged by the original claimant. Though the claim is allowed for Rs. 3,64,000/-, the claim is dismissed against Respondent-Insurance Company. Thus, discharging Insurance Company from its liability is the ground in this Appeal.

3. The deceased Balasaheb Kacharu Parhad who was 35 years old met with an accident on 9th October, 2006 when he was sitting as a pillion rider on the motor-cycle bearing No. MH-17 W-2843 which was driven by Respondent No. 1. The original claimants are the wife and 3 minor children of the deceased filed an application under Section 166 of the Motor Vehicle Act. The Insurance Company appeared in the said matter and defended the claim on the point that Respondent No. 1 was not holding valid licence and the deceased Balasaheb was sitting as a pillion rider and therefore he is not entitled to compensation. The original claimants tendered the evidence on the point of quantum and accident. After considering the evidence, the learned Judge of the trial Court fixed the notional income at the rate of Rs. 3,000/- p.m. of the deceased and awarded the compensation of Rs. 3,64,000/-. The Court accepted the defence of the Insurance Company that there is a breach of the policy that the driver-owner of

the motor-cycle was not holding valid licence at the time of incident and there is breach of policy. The trial Court held that the policy was act only policy and therefore the pillion rider is not covered. So the Insurance Company was discharged from the liability of the payment of the compensation. Being aggrieved by the said judgment and award, the original Claimants/present Appellants filed this Appeal.

4. The learned counsel for the original claimants submitted that the order passed by the Tribunal is not legal in dismissing the liability of the Insurance Company. He relied on the circular is produced and the policy is comprehensive policy. He submitted that though the deceased was pillion rider, he is covered under the policy as held in the case of ***"United India Insurance Company Limited vs. Kamal Maruti Darekar and Others, 2008 ACJ 1940"*** and ***"Samundra Devi and Others vs. Narendra Kaur and Others, 2009 (1), Mh.L.J., 38"***. He further submitted that the Insurance Company did not examine any witness to show that the owner-Respondent was not holding valid licence at the relevant time and hence the order is to be maintained.

5. The learned counsel Mr. Sathaye for the Insurance Company has submitted that the order holding the Insurance Company not liable to pay any compensation to the Applicants passed by the Tribunal is correct. The finding of the Tribunal that the conditions of the policy as Respondent No. 1 who was the owner and driver of the motor-cycle was not holding valid licence is also correct. At no time, the licence was produced by Respondent No. 1 and therefore there is a clear breach of the policy. He further submitted that the Insurance Company has examined the witness has deposed that the Insurance Company issued notice to the original Opponent No. 1 i.e. driver-owner of the motor-cycle and called upon him to produce the valid licence. However, he did not come and thus the Insurance Company has discharged its burden to prove that the driver was not holding valid licence. Under such circumstances, the order passed by the learned Member is required to be set aside.

6. Heard the submissions of both the learned counsel. Perused the record. A short point involved in this Appeal is how the Insurance Company can discharge the negative burden of proving a fact that the driver-Respondent was not holding valid licence at the

time of the accident. I have considered the submissions of the learned counsel for the Insurance Company. The Insurance Company has issued a notice to the Respondent-driver. However he neither responded to the Insurance Company nor he appeared before this Court. The Insurance Company has taken a specific stand that the owner-driver of the offending vehicle was not having a valid licence. Then, the burden is on the Insurance Company to prove this negative fact that he was not holding a valid licence. To give notice to the driver for production of the licence is not sufficient way to prove the fact. It is necessary for the Insurance Company to examine the R.T.O officer who should have deposed that no driving licence was ever issued in the name of the driver of the offending vehicle. By tendering such evidence only this negative fact can be proved. The party is required to adduce relevant evidence to prove the said fact. Issuing notice is not sufficient when there is no response from the driver-owner and that is not sufficient to discharge the burden. The policy is comprehensive policy and therefore the risk of the pillion rider is covered.

7. In view of the above, the First Appeal is partly allowed.

8. The order dated 18th March, 2010 discharging Respondent No. 2-Insurance Company vide Clause 6 thereby exonerating from the liability is hereby set aside.

9. The Respondent No. 2 - Insurance company and Respondent No. 3 in the original application both are hereby jointly and severally liable to pay the compensation.

10. Accordingly, the First Appeal is disposed of.

(MRS.MRIDULA BHATKAR, J.)