

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2478 OF 2011

WITH

CIVIL APPLICATION NO.5263 OF 2011

IN

FIRST APPEAL NO.2478 OF 2011

United India Insurance Company Ltd.	]
Having its regional office at 5 th	]
Floor, Bharti Vidyapeeth Bhavan,	].. Appellant/
Near Alka Chowk Pune.	] Applicant

Versus

- | | |
|-------------------------------------|---|
| 1) Smt. Parubai Vinayak Katake |] |
| (Since deceased deleted) |] |
| 2) Shri. Vijay Vinayak Katake, |] |
| Age: 47 years, Occu: Service, |] |
| 3) Shri. Rajendra Vinayak Katake, |] |
| Age: 45 years, Occu: Agriculturist, |] |
| All R/at Pisavare Taluka Purandar, |] |
| District Pune. |] |
| 4) Shri. Jagannath Devnarayan Jha, |] |
| Age: 49 years, Occu: Service, |] |
| R/at Dr. Subramnagar R. No.53, |] |
| Wakoli Bridge Santacruz (E), |] |
| Mumbai 400 055. |] |

5) White Pearls Hotels and Invest Pvt. Ltd.]
Through its Proprietor Prakash Kantilal Jani,]
Age: Adult, Occu: Business,]
R/at 2/32 Kamal Mansion,]
7th Arthur Bunder Road,]
Colaba, Mumbai 400 005].. Respondents

Mr. Ketan Joshi for the Appellant/Applicant.

Mr. V. S. Tadake for the Respondent Nos.2 & 3.

Mr. Akhileshwar Sharma for the Respondent No.5.

CORAM : R.M. SAVANT, J.

DATE : 13th JUNE 2016

ORAL JUDGMENT

1. Admit. With the consent of the Learned Counsel for the parties heard forthwith.

2. The above First Appeal challenges the judgment and order dated 12.09.2011 passed by the Learned Chairman of the Motor Accident Claims Tribunal, Pune ("MACT" for short), by which order, the Respondent Nos.1 to 3 to the claim Petition were directed to jointly and severally pay an amount of Rs.1,00,000/- to the Petitioners in the claim Petition towards full and final compensation including Rs.50,000/- already paid towards No Fault Liability, with interest at the rate of 6% per annum from the date

of filing of the Petition i.e. from 08.11.2000 on the whole amount till the date of payment towards 'No Fault Liability' and thereafter at the same rate of interest over the balance amount till the realisation of the entire amount.

3. The facts giving rise to the filing of the above First Appeal can in brief be stated thus :-

The Respondent Nos.1 to 3 herein are the original claimants. The Respondent No.4 is the original Respondent No.1. i.e. driver. The Respondent No.5 is the original Respondent No.2 i.e. the owner of the vehicle and the Appellant which is the Insurance Company is the Respondent No.3 to the claim Petition. The Respondent Nos.1 to 3 herein are the wife and the two sons of the deceased Vinayak Laxman Katake. The said Vinayak expired in the fatal accident that took place on 30.11.1999. The accident took place on the Pune-Jejuri road in front of Dr. Babasaheb Ambedkar Udyan at Saswad. The Respondent No.4 herein who was the driver was driving a Tata Sumo vehicle bearing registration No. MH-01/U-4942 owned by the Respondent No.5 herein and insured with the Appellant herein who as indicated above was the Respondent No.3 in the claim Petition. It was the case of the claimants that the said vehicle was driven in a rash and negligent manner from Jejuri towards Pune and

it was also being driven at high speed. In the said process it knocked down the deceased Vinayak causing serious injuries to him. He was taken to the hospital, but succumbed to his injuries on 30.11.1999. After the accident, the Head Constable of the Police Station concerned had lodged an FIR which resulted in registration of crime bearing No.87 of 1999 under Section 279, 337 and 338 of the IPC and also under the relevant provisions of the Motor Vehicles Act against the Respondent No.1 i.e. the driver of the Tata Sumo vehicle. The claimants thereafter filed the Motor Accident Claim Petition No.811 of 2001. The claimants being the legal heirs claimed an amount of Rs.1,00,000/- as compensation on account of the death of the deceased. This claim was founded on the fact that the deceased was a pensioner and drawing a pension of Rs.4500/- per month and the compensation claimed for the loss of estate as also for pecuniary loss caused to them on account of death of their father the said Vinayak.

4. The Respondent No.2 i.e. the Respondent No.5 herein filed its written statement. It was averred in the said written statement that the vehicle was insured with the Appellant herein i.e. the Respondent No.3 in the claim Petition. It was further averred that the driver who was driving the vehicle which met with the accident was having valid driving licence at the time of his employment. It was further averred that Respondent No.2 had not committed any breach of the terms and conditions of the

Insurance Policy.

5. The Appellant herein i.e. the Respondent No.3 to the claim Petition filed its written statement. It was sought to be contended in the written statement that the claimants who are the major sons of the deceased were not dependent on him and therefore they are not entitled for compensation. It was contended that licence No.WB-01-30652 allegedly issued in favour of the driver was not issued by the RTO to him but was issued to one Shivram Mondal. On the basis that the licence of the Respondent No.1 was fake and therefore the owner had not complied with the provisions of 3(1) of the Motor Vehicles Act, it was sought to be contended that there was a breach of the terms and conditions of the contract of insurance and the Insurance Company was therefore not liable to indemnify the insurer. In so far as the accident is concerned, it was sought to be contended that the deceased was in hurry to catch the bus and that he was in a confused state, he did not listen to the horn and therefore the accident happened. The Appellant i.e. the Insurance Company therefore sought to absolve itself from the liability.

6. The Respondent No.1 driver did not appear though served. The MACT framed three issues, which were to the following effect :-

“1) Whether the deceased Vinayak Laxman Katake died

due to rash and negligent driving of respondent No.1 – Jagannath Devenarayan Jha, as a driver of respondent No.2-White Pearls Hotels and Invest. Pvt. Ltd. of Tata Sumo bearing No.Mh-01/U-4942 on 30.11.1999 at about 3.00 p.m. near Pune Municipal Transport Bus Stop, Saswadgaon, Pune Jejuri road ?

2) whether the accident has occurred due to negligent and rash act of the deceased himself in neglecting the condition of the road out of hurry to catch the bus of Pune Municipal Transport ?

3) whether the Petitioners suffered any damages (A) If yes, to what extent and at what rate of interest (B) From whom the compensation is payable.”

7. In so far as the evidence is concerned, the claimants led the evidence of Vijay i.e. claimant No.2 as also the evidence of one Pramod Pardeshi, Office Superintendent working with the Pune Municipal Transport. In so far as the documentary evidence is concerned, the claimants relied upon the police papers in so far as the manner in which the accident had occurred as well as the 7/12 extract to substantiate their case as regards the income of the deceased Vinayak.

8. The MACT proceeded to decide the said issues. The MACT on the basis of the Spot Panchanama (Exh.44), wherein it was stated that the width of the road was 22 ft. and considering the fact that there were no brake marks which indicate that the Respondent No.1 had applied the brakes as also having regard to the FIR lodged which has resulted in

registration of the crime being CR No.87 of 1999 came to a conclusion that the evidence on record was sufficient to hold that the accident had happened because of the rash and negligent driving of the Tata Sumo vehicle by the Respondent No.1. The MACT also recorded a finding that the deceased Vinayak had died because of the multiple injuries suffered by him in the accident caused by the Tata Sumo vehicle. In so far as the compensation is concerned, the MACT observed that the deceased was having pension of Rs.4438/- per month and that he was getting income by cultivating the agricultural lands and therefore the claimants who are his sons are entitled for loss of estate as well as compensation for pecuniary loss caused to them due to accidental death of their father.

9. The MACT after holding that the claimants are entitled to compensation then proceeded to decide as to who it would be who would be liable to pay the said compensation. This the MACT was required to adjudicate in view of the fact that it was the case of the Appellant i.e. the Respondent No.3 that the Respondent No.1 who was driving the vehicle was not holding driving licence and therefore it was the case of the Appellant that there was a breach of the terms and conditions of the contract of insurance. The MACT adverted to the evidence of the employee of the Respondent No.2 owner one Dashrath Jadhav. In his evidence, he has stated that the Respondent No.1 Jagannath Jha was driving the Tata

Sumo owned by the Respondent No.2. He has further stated in his evidence that Respondent No.1 had furnished his personal details with the Respondent No.2 and had also furnished copy of his driving licence. He has further stated that the copy of the driving licence was verified from the original by Shri. Jani the Manager of the Respondent No.2. He has further deposed that the licence appeared to be genuine. There was no reason to suspect it to be fake. The said witness has thereafter deposed that after receipt of the notice of the claim Petition, intimation was given to the Respondent No.3 Insurance Company and the documents as called by the Insurance Company were also submitted. Amongst the documents submitted was the letter dated 30.08.2001 of the owner addressed to the Respondent No.3 which is at Exh.69. By the said letter, the Respondent No.2 owner had intimated the Respondent No.3 to make necessary arrangements to appear in the Court after the receipt of the notice of the claim Petition. It has further come in his evidence that thereafter by letter dated 06.09.2001, the Respondent No.2 owner had forwarded the claim form, photocopy of insurance policy, photocopy of the driver's licence and photocopy of the registration book to the Respondent No.3 with a request to seek more information, clarification if required. The MACT on the basis that the Appellant herein i.e. the Respondent No.3 had carried out investigation pursuant to the photocopy of the driving licence furnished to

it, however, having not examined the said investigator came to a conclusion that the Respondent No.3 had not proved that licence No.WB-01-30652 was the number of the fake licence of the Respondent No.1. The MACT has further observed that there is no iota of evidence to infer that the Respondent No.2 owner was knowing this fact i.e. the fact of the driving licence of the driver being fake at the time of giving employment of the Respondent No.1 or till the date of the accident. The MACT therefore concluded that the Respondent No.2 i.e. the owner had taken all necessary care which a prudent man could have taken at the time of employing the driver. The MACT thereafter relied upon the judgment of the Apex Court in National Insurance Co. Ltd. Vs. Geeta Bhat and others reported in (2008) 12 SCC 426, wherein, the Apex Court has held that a owner of a vehicle is not expected to verify the genuineness of the licence of his driver from the Transport Authority's office. The MACT also relied upon another judgment of the Apex Court in National Insurance Co. Ltd. Vs. Swaran Singh reported in (2004) 3 SCC 297, wherein, the Apex Court once again examined the issue of fake driving licence and consequence therein on the Insurance Company. The Apex Court has observed in para 102 of the said judgment that the Insurance Company to avoid its liability towards the insured 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 licenced driver or one who was not disqualified to drive at the relevant time. The Apex Court observed that the question as to whether the owner has taken reasonable care to find out whether the driving licence produced by the driver (a fake one or otherwise), does not fulfill the requirement of law or not will have to be determined in each case. The MACT held that in the instant case, the owner i.e. the Respondent No.2 has established that he has taken reasonable care to find out whether the driving licence produced by the Respondent No.1 at the time of seeking employment fulfills the requirements of law. The MACT further held that the Respondent No.2 was not expected to verify the genuineness of the licence from the RTO as held in *National Insurance Co. Ltd. Vs. Geeta Bhat and other's* case (*supra*). The MACT as indicated above has accordingly allowed the claim Petition to the extent mentioned in the earlier part of this order. As indicated above, it is the said judgment and order dated 12.09.2011 passed by the Learned Chairman of the MACT Pune which is taken exception to by way of the above First Appeal.

10. Heard the Learned Counsel for the parties.

11. The Learned Counsel for the Appellant Mr. Ketan Joshi whilst questioning the liability of the Appellant to be liable to pay the

compensation awarded would make the following submissions :-

- A) That the MACT failed to consider that the licence bearing No.WB-01-30652 of the Respondent No.1 is fake.
- B) That the MACT on the basis of the settled legal position ought to have absolved the Appellant Insurance Company on the ground that since the Respondent No.1 was driving with a fake licence, the terms and conditions of the insurance policy were breached and therefore the Insurance Company was not liable to indemnify the insurer towards third party claims.
- C) That the MACT on the basis of Section 149(2) of the Motor Vehicles Act ought to have absolved the Appellant Insurance Company from the liability. Reliance is sought to be placed on the judgment of the Apex Court reported in **(2006) 4 SCC 250** in the matter of **National Insurance Co. Ltd. Vs. Kusum Rai and others**. The Apex Court in the said case held that one of the defences available to insurer was that the vehicle driver was driving with a fake licence and therefore there was a breach of the condition of the insurance contract and the Insurance Company therefore could not be made liable. In the said case, the Apex Court held that the High Court and the Accident Claims Tribunal had erred in holding otherwise and saddling the insurer with liability.

D) The Learned Counsel appearing on behalf of the Appellant fairly drew this Court's attention to the judgment of the Apex Court reported in (2013) 10 SCC 217 in the matter of Pepsu Road Transport Corporation Vs. National Insurance Company. The said judgment lays down the circumstances in which the insurer can be absolved from its liability and the Insurance Company can be may liable.

12. Per contra, the Learned Counsel appearing for the Respondent Nos.1 to 3 i.e. the claimants would support the impugned judgment and order and would place reliance on the judgment of the Apex Court in *Pepsu Road Transport Corporation's* case (*supra*). It was the submission of the Learned Counsel that having regard to the facts and circumstances of the present case, the impugned judgment and order passed by the MACT Pune need not be interfered with.

13. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The question that is posed in the instant matter is whether in the facts and circumstances of the present case, the Motor Accident Claims Tribunal was right in imposing the liability to pay compensation on the Appellant i.e. the Insurance Company. As indicated hereinabove, the Appellant has sought to avoid liability on the ground that the Respondent No.1 driver was driving the vehicle in question with a fake

driving licence. The MACT having regard to the said defence had adverted to the evidence of the Dashrath Jadhav who is the employee of the owner of the vehicle i.e. Respondent No.2 who stated in his evidence that the copy of the driving licence produced by the Respondent No.1 was checked with the original and that the Respondent No.1 prior to his employment was given training and thereafter was in the employment of the Respondent No.2. The MACT had also adverted to the fact that the Appellant had not proved that the licence No.WB-01-30652 was proved as that belonging to the Respondent No.1. The MACT on the said basis had come to a conclusion that the Respondent No.2 had taken all necessary and reasonable care which a prudent man could have taken at the time of employing the driver. The MACT has in terms held that it cannot be said that the Respondent No.2 owner had knowingly committed breach of terms of the contract of insurance or that Respondent No.2 owner had handed over Tata Sumo to the Respondent No.1 knowing that his driving licence was fake.

14. Now coming to the judgment in *National Insurance Co. Ltd. Vs. Kusum Rai and other's case (supra)*, in the said case, the Apex Court held that the insurer could rightly set up the defence of the breach of condition of the insurance contract on the basis that the vehicle was being driven by a person not possessing appropriate licence. However, the Apex

Court in the facts of the said case more especially since the claimants were from a poor background and since they must have suffered great mental agony, the Apex Court was of the view that it may not be appropriate to push them into another round of litigation particularly when it may be difficult for them to secure the presence of the owner of the vehicle, did not deem it appropriate to interfere with the Award in its jurisdiction under Article 136 of the Constitution of India and directed the insurer to recover the amount from the owner in the manner as directed in **Oriental Insurance Co. Ltd. Vs Nanjappan** reported in **2004(13) SCC 224**.

15. The Apex Court thereafter in *Pepsu Road Transport Corporation's case (supra)* was once again seized with the insurer's liability vis-a-vis when the driver is found to have a fake licence. The Apex Court in *Pepsu Road Transport Corporation's case (supra)* held that the insurer's defence that the driver having fake driving licence at the time of accident not sufficient to avoid liability. The Apex Court held that the onus is on the insurer to prove that owner of vehicle driven by the driver failed to take reasonable care in employing a qualified and competent driver having valid licence. The Apex Court held that if the owner exercised reasonable care, he need not further verify genuineness of the licence from the licencing authority before appointing the driver. The Apex Court held the situation would be different if at the time of insurance of the vehicle or

thereafter the Insurance Company requires the owner of the vehicle to have the licence duly verified from the licencing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the Insurance Company would not be liable for compensation. Hence, in *Pepsu Road Transport Corporation's case (supra)* the Apex Court has laid down the circumstances in which the Insurance Company can be absolved of its liability to pay compensation in a case where the driver is found to be driving with a fake licence. In the instant case, as indicated above, the MACT has recorded a finding of fact that the owner had taken all necessary and reasonable care which a prudent man could have taken at the time of employing the driver and therefore it can be said that in the instant case, the test as laid down by the Apex Court in *Pepsu Road Transport Corporation's case (supra)* has been satisfied. Since the amount of compensation claimed by the claimants was neither disputed before the MACT nor in this Court, this Court was not required to go to the quantum

that was awarded to the claimants. The impugned judgment and order dated 12.09.2011 passed by the Learned Chairman of the MACT Pune therefore does not warrant any interference by this Court in its Appellate jurisdiction. The First Appeal is accordingly dismissed.

16. The amount of Rs.25,000/- which is deposited by the Appellant in this Court by virtue of Section 173 of the Motor Vehicles Act is directed to be transferred to the Trial Court, so that it would be convenient for the claimants to withdraw the same from the Trial Court.

17. In view of the dismissal of the First Appeal, the Civil Application does not survive and to accordingly stand disposed of.

[R.M. SAVANT, J]