

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**FIRST APPEAL NO. 657 OF 2005
WITH
FIRST APPEAL NO. 658 OF 2005**

FIRST APPEAL NO.657/2005.

Sudhir @ Sudhakar Pandurang
Talokar, aged about 47 years,
Legal Practitioner, Kirti Nagar,
Akola, Tq. and Distt. Akola.

.... **APPELLANT.**

// **VERSUS** //

1. Smt. Ushatai Wd/o. Uttamrao Shelke,
aged about 40 years, Occ. Household,
2. Ku. Sharda D/o. Uttamrao Shelke,
aged 17 years, Occ. : Student,
3. Ku. Lata D/o. Uttamrao Shelke,
aged 15 years, Occ. Student.
4. Amol S/o. Uttamrao Shelke,
aged 12 years, occ. Student.
5. Ku. Sunita D/o. Uttamrao Shelke,
aged 5 years, Occ. Nil.

Nos. 2 to 5 are minors through
Guardian-mother, applicant No.1

All residents of Sasti Tq. Patur,
Dist. Akola.

6. The Oriental Insurance Co.Ltd.,
through Divisional Manager,
Old Cotton Market, Akola.

- 7) Sau. Sarita W/o. Ganesh Thakre,
Adult, Resident of Sasti,Tq.Patur,
Dist. Akola.

.... RESPONDENTS.

Shri R.L.Khapre, Advocate for Appellant.
Shri A.R.Godbole, Advocate for Respondent No.6.

WITH

FIRST APPEAL NO.658/2005.

Sudhir @ Sudhakar Pandurang
Talokar, aged about 47 years,
Legal Practitioner, Kirti Nagar,
Akola, Tq. and Distt. Akola.

.... APPELLANT.

// VERSUS //

1. Sau. Sheela Keshav Bankar,
aged about 38 years, Occ. Advocate,
Resident of Jatharpeth, Akola,
Tq. and Dist. Akola.
2. The Oriental Insurance Co.Ltd.,
through Divisional Manager,
Old Cotton Market, Akola.

.... RESPONDENTS.

Shri R.L.Khapre, Advocate for Appellant.
Shri C.A.Joshi, Advocate for Respondent No.1.
Shri A.R.Godbole, Advocate for Respondent No.2.

CORAM : Z.A.HAQ, J.
DATED : OCTOBER 13, 2016.

ORAL JUDGMENT :

1. Heard Shri R.L.Khapre, advocate for the appellant, Shri C.A. Joshi, advocate for respondent No.1 in First Appeal No.658/2005 and Shri A.R. Godbole for respondent-Insurance Company. None appears for the remaining respondents.

2. In both these appeals the awards passed by Motor Accident Claims Tribunal upholding the claim of claimants are challenged. The Tribunal has concluded that the present appellant (owner and driver of car) was not holding valid licence at the time of the accident and therefore, the Insurance Company is not liable to pay the amount of compensation. The Tribunal has, however, directed that the amount of compensation should be paid by the Insurance Company and the Insurance Company may recover it from the owner of the vehicle.

The learned advocates for the respective parties submit that the amount of compensation was deposited by the Insurance Company and it is withdrawn by the claimants. Now, the dispute is between the appellant and the Insurance Company.

3. According to the appellant, the findings recorded by the Tribunal that the appellant was not having valid licence at the time of accident are contrary to the evidence on record.

4. After hearing, the following points arise for consideration :

i) Whether the findings recorded by the Tribunal that the appellant was not having valid licence on the date of accident are proper and sustainable ?

ii) Whether the impugned award is required to be set aside or modified ?

5. The Tribunal has dealt with this issue from paragraph No.24 onwards of the impugned award. The facts on record show that initially the appellant pleaded that he obtained licence from District Transport Office, Ranchi, Licence Number being 2668 of 1995. The Insurance Company had requested for examining the District Transport Officer. The evidence of District Transport Officer showed that the Licence No. 2668/1995 was not granted to the appellant, but was granted to Sunilkumar Bholaprasad Gupta. The appellant had filed an application seeking permission to amend the written statement to incorporate the pleading that his licence number is 3979/1995 and its entry exists in the register maintained by the District Transport Office, Ranchi. This application was rejected by the Tribunal. The appellant had filed Writ Petition No. 2931 of 2003 before this Court challenging the order passed by the Tribunal by which the amendment application was rejected. This Court by the judgment dated 22nd September, 2003 allowed the writ petition and permitted the appellant to amend the written statement. Accordingly, the appellant amended the written statement.

6. After the amendment came to be allowed the appellant has not entered the witness box and has not filed any application seeking permission to cross-examine the District Transport Officer, Ranchi. According to the learned advocate for the appellant, the Tribunal has not granted opportunity to the appellant to lead evidence or to cross-examine the above referred witness. In the impugned award it is recorded that the present appellant has not taken any steps to lead evidence after the amendment was allowed. The Tribunal has also doubted the claim of the present appellant on various other aspects.

7. The learned advocate for the appellant has submitted that the appellant had deposited an amount of Rs.2,55,000/- with the Registry of this Court as per the order passed by the Court on 20th January, 2006. It is requested that the amount deposited by the appellant be returned to the appellant along with interest. In my view, considering the facts of the case, the amount deposited by the appellant along with interest should be transferred to Motor Accident Claims Tribunal, Akola and the disbursement of the amount shall be as per the award which may be passed by the Tribunal.

Be that as it may, considering the facts of the case, in my view, the interests of justice would be sub-served if the present appellant is granted opportunity to prove his case.

Hence, the following order :

- i) It is held that the findings recorded by the Tribunal on point No.3 are not sustainable and the award in so far as it absolves the Insurance Company and saddles the liability on the present appellant, is set aside.
- ii) The matter is remitted to the Tribunal to reconsider point No.3 as framed by it and to pass order on the point of fixation of liability to pay the amount of compensation.
- iii) The present appellant (owner of the vehicle) and the Insurance Company are at liberty to amend the pleadings, file documents and lead evidence, if so advised.
- iv) Remaining part of the award determining the amount of compensation receivable by the claimants is not disturbed and it is clarified that the claimants are entitled to retain the amount received by them towards compensation as per the impugned award.
- v) The present appellant and the respondent-Insurance Company undertake to appear before Motor Accident Claims Tribunal, Akola on 29th November, 2016 and abide by further orders in the matter.
- vi) The claimants are at liberty to participate in the proceedings.

The appeals are allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

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