**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.196 OF 2002

1. The Chief Executive Officer,
Zilla Parishad, Osmanabad

2. The Executive Engineer (W)
Zilla Parishad, Osmanabad **...APPELLANTS**
(Orig. Resp. No. 1 & 4)

VERSUS

1. Shashikalabai W/o. Sandipan Giri,
Age: 35 years, Occu: Household,
R/o. Hasegaon, Tq. Kallam,
Dist. Osmanabad

2. Lata D/o. Sandipan Giri,
Age: 15 years, (Minor), U/g.
of appellant No.1, Shashikalabai
W/o. Sandipan Giri, R/o. as above.

3. Kalpana d/o. Sandipan Giri,
Age: 13 years, (Minor),
U/g. of appellant No.1 Shashikalabai
W/o. Sandipan Giri, R/o. as above

4. Ananta Sandipan Giri,
Age: 11 years, (Minor) U/g. of
appellant No.1 Shashikalabai
W/o. Sandipan Giri, R/o. as above,

5. Archana D/o. Sandipan Giri,
Age: 9 years, (Minor), U/g.
of as above

6. Assistant Insurance Director
of Maharashtra, Maharashtra State
Bombay/400051.

7. Kiran S/o. Manohar Shanme,
Age: 35 years, Occu.:Driver,
R/o. Shivankhed, Tq. Chakur,
Dist. Latur **...RESPONDENTS**
(Respondent No.1 to 5 Org. Claimants & R. No. 6 & 7 Org. Resp. No. 2 & 3)

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Mr. Kailas More, Adv. h/f. Mr. K.J. Ghute Patil, Adv. for Appellant.
Mr. S.P. Sonpawale, AGP for Respondent State.
Mr. R.V. Naiknavare, Advocate for Respondent Nos.1 to 5.

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CORAM: P.R.BORA, J.

DATE : August 1st, 2017

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ORAL JUDGMENT:

1. The appellant has filed the present appeal against the judgment and award passed by the Motor Accident Claims Tribunal at Osmanabad, in M.A.C.P.No.231/1995 decided on 22nd of October, 2001. The aforesaid claim petition was filed by present respondent nos. 1 to 5.

2. Learned Tribunal, after assessing the oral and documentary evidence brought on record held the original claimants entitled for total compensation of Rs.58,000/- inclusive of No Fault Liability compensation. The Tribunal directed payment of amount of compensation by the present

appellant, and dismissed the claim petition against the Assistant Insurance Director. Aggrieved thereby, the Zilla Parishad has preferred present appeal.

3. Shri Kailas More, learned Counsel, holding for Mr.K.J.Ghute Patil, learned Counsel for the appellants, submits that there was valid policy for the insured vehicle and the same was produced on record. However, the terms and conditions of the said policy have not been properly considered by the Tribunal. Learned Counsel submitted that the Tribunal has wrongly held that the breach of the policy conditions was committed by the present appellant by allowing a person not holding valid driving license to drive the offending vehicle. Learned Counsel, therefore, prayed for setting aside the impugned award and to make original respondent no.2 i.e. Assistant Insurance Director liable to make payment of compensation and to set aside the impugned order whereby the present appellant is directed to pay the amount of Rs.58,000/- to the Assistant Insurance Director, original respondent no.2.

4. Shri Sonpawale, learned A.G.P. for present respondent no.6 / original respondent no.2, submitted that the specific defense was raised that the owner of the vehicle has

committed breach of insurance policy by allowing a person not holding valid driving license to drive the offending vehicle. Learned A.G.P. further submitted that the Tribunal has recorded an unambiguous finding in paragraph no.11 of its judgment, indicating that though there was specific defense, no evidence was produced on record by the owner of the vehicle to show that the driver of the offending vehicle was holding a valid driving license on the date of the accident. Learned A.G.P. submitted that in such circumstances, no fault can be found with the finding so recorded by the Tribunal. Learned A.G.P., therefore, submitted for dismissal of the appeal.

5. Shri R.V.Naiknavare, learned Counsel for respondent nos. 1 to 5, supported the impugned judgment and award and prayed for passing appropriate orders.

6. The short issue that is involved in the present appeal is whether the breach of the policy condition was proved as alleged by the original respondent no.2.

7. As has been observed by the Tribunal, the owner i.e. the present appellant had committed breach of policy conditions by allowing a person not holding the valid driving

license to drive offending vehicle on the date of the accident. Nothing has been brought on record in this appeal also or before the Tribunal to show that the person who was driving the offending vehicle on the date of the accident was holding valid driving license. In absence of any such material brought on record, or any such evidence produced by the owner, it does not appear to me that the Tribunal has committed any error in dismissing the petition against the Assistant Insurance Director, and holding the present appellant solely responsible for payment of compensation to the claimants.

The First Appeal being devoid of substance, deserves to be dismissed and is accordingly dismissed. Pending Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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AGP/196-02fa