

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

FIRST APPEAL NO. 221 OF 2017

M/S IFFCO-TOKIO GENERAL INSURANCE CO. LTD.
VERSUS
ANKUSH MARUTI GAIKWAD AND OTHERS

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Advocate for Appellant : Mr V N Upadhye
Advocate for Respondent No.1 : Mr A A Kokad

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CORAM : V.K. JADHAV, J.

Dated: June 12, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Nilanga, dated 5.8.2015 in MACP No.43/2009, the original respondent no.4-insurer has preferred this appeal to the extent of defence raised by the appellant-insurer before the Tribunal.
3. Brief facts, giving rise to the present appeal are as follows :-
 - a] On 17.8.2008, respondent no.1-original claimant Ankush Gaikwad was returning to his village in auto-

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rickshaw and on way within the limits of village Mubarakpur, one tractor alongwith trolley bearing registration No.MH-24/D-4014 coming from opposite side in high speed gave dash to said autorickshaw. In consequence of which, said autorickshaw turned turtled towards left side and respondent-original claimant Ankush sustained multiple fractured injuries. Further, injuries sustained by him also resulted into permanent disablement.

b] Respondent-original claimant has incurred huge medical expenses and loss of future income on account of permanent disablement sustained by him. Respondent-original claimant thus approached the Tribunal by filing M.A.C.P. No.43/2009 for grant of compensation under various heads.

c] The respondent owner and driver of the said tractor strongly resisted the claim by filing written statement. It has been contended that, the driver of the autorickshaw had lost his control due to excessive speed of the autorickshaw and, as such he was entirely

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responsible for the accident. The appellant-insurer has also raised similar plea and further raised a defence that there has been a breach of policy conditions and thus the appellant-insurer is not liable to pay the compensation. It has been specifically contended that the driver of the tractor was not having valid and effective driving licence at the time of accident.

d] The respondent-original claimant has adduced oral and documentary evidence and the appellant-insurer has also adduced the evidence. The learned Member of the Tribunal has partly allowed the claim petition and thereby directed the respondents to pay jointly and severally a sum of Rs.47,600/- alongwith interest @ 6% p.a. Hence, this appeal.

4. The learned counsel for the appellant-insurer submits that in order to prove the defence of the breach of the policy conditions, the appellant-insurer has examined its relationship executive DW 1 Vijay Gulwe Exh.55. Further, as per the charge sheet Exh.53, the

driver of the tractor was charged with offence punishable under section 3/181 of the Motor Vehicles Act. It is thus clear that, the driver of the tractor was not holding valid and effective driving licence at the time of accident and as such, he was charge sheeted by the police. Learned counsel submits that, the appellant-insurer has sufficiently discharged the burden to prove the defence and the Tribunal ought to have exonerated the appellant-insurer from the liability to pay the compensation alongwith respondent-owner. Learned counsel for the appellant has not disputed the quantum of compensation as awarded by the tribunal.

5. Learned counsel for respondent-claimant submits that, the concerned police station has only charge sheeted the driver of the tractor. On the basis of the charge sheet alone, it cannot be said that, the appellant-insurer has discharged the burden to prove the defence that the driver of the tractor was not holding valid and effective driving licence. Learned counsel submits that, the Tribunal has, therefore, rightly fastened the liability

on the appellant-insurer jointly and severally alongwith the owner of the said tractor. No interference is required.

6. On careful perusal of the pleadings, evidence and the impugned judgment and award passed by the Tribunal, it appears that the appellant-insurer has raised a specific defence that, the driver of the tractor was not holding valid and effective driving licence at the time of accident and, as such, there has been breach of specific conditions of the policy. It is well settled that, burden is on the appellant-insurer to prove the said defence. In order to discharge the said burden, the appellant-insurer has examined its relationship executive DW.1 Vijay Exh.55. However, he is not having any personal knowledge as to whether the driver of the said tractor was holding valid and effective driving licence at the time of accident or not. The appellant-insurer mainly rely upon the charge-sheet forwarded by the police Exh.53. The driver of the tractor has been charge sheeted under the Indian Penal Code sections,

and under section 3/181 of the Motor Vehicles Act. Thus, the driver of the tractor was charge sheeted for not holding the driving licence, however, merely on the basis of the charge sheet, it cannot be said that, the appellant-insurer has discharged the burden of proving its defence. The learned Member of the Tribunal has rightly observed that, in order to prove said defence, it was the duty of the appellant-insurer to call upon the driver or insured to produce the driving licence. I would prefer to add in those observations that, in order to discharge said burden, the appellant-insurer has not examined officer of the concerned R.T.O. Except this defence, the appellant-insurer has not challenged the judgment and award passed by the Tribunal on any other ground.

7. I do not find any substance in the appeal. The learned Member of the Tribunal has rightly fastened the liability on the appellant-insurer. No interference is required. Hence, following order.

O R D E R

1. First appeal is hereby dismissed with costs.
2. Appeal is accordingly disposed of.
3. The respondents-original claimant is hereby permitted to withdraw the amount, if deposited before this Court.

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(**V.K. JADHAV, J.**)

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