IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2083 OF 2015

NATIONAL INSURANCE COMPANY LTD.
THROUGH DIVISIONAL MANAGER
VERSUS
VILAS GANGARAM BHALAKE AND ANOTHER

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Advocate for Appellant : Mr. S. N. Patne.
Advocate for Respondent No.1 : Mr. S. K. Shinde.
Advocate for Respondent No.2 : Mr. P. V. Jadhavar, h/f Mr. A. N. Nagargoje.

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CORAM : **V. K. JADHAV, J.**
DATE : 30th January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Sangamner dated 15th December, 2014 in MACP No.39 of 2006, the original Respondent No.2 / Insurer has preferred this appeal to the extent that the defence raised by the Respondent / Insurer about breach of the terms and conditions of the policy was not considered by the Tribunal.

3 On 24th October, 2005 at about 10:45 pm the Respondent / Claimant was proceeding towards his village Kauthe

Bk. on motorcycle and one Bhausaheb Wakale was riding the said motorcycle. On Pune–Nashik highway, one Alto car bearing registration No.MH-17-T-412 came from the opposite direction and gave a dash to the motorcycle and that is how the accident had taken place. In consequence of which, the Respondent / Claimant has sustained the compound fracture of right femur, fracture of left patella and fracture of right tibia. He was immediately shifted to Kokhari Accident Hospital, Pune. He has incurred the huge medical expenses and the injuries sustained by him also resulted into permanent disablement. The Respondent / Claimant has approached to the Motor Accident Claims Tribunal, Sangamner by filing MACP No.39 of 2006 for grant of compensation under the various heads. The learned Member of the Tribunal has partly allowed the claim petition and thereby directed the Respondents jointly and severally to pay Rs.3,71,933/- inclusive of NFL amount to the Respondent / Claimant. Being aggrieved by the same, the Respondent / Insurer has preferred this appeal to the extent as stated above.

4 The learned counsel for the Appellant / Insurer submits that even though the Appellant / Insurer has raised a specific

defence that the driver of the car involved in the accident was not holding valid and effective driving licence at the time of accident, the learned member of the Tribunal has not considered the same. The learned Member of the Tribunal has not considered the documents produced by the Appellant / Insurer alongwith the list Exhibit – 44. The said documents included a letter issued by one Advocate by name Vikas Choudhari from Hisar (Haryana State). Furthermore, the verification note issued by the Licensing Authority, Hisar is also placed on record. Thus, conjoint reading of both the documents makes it clear that the driver of the car involved in the accident, was not holding the valid and effective driving licence at the time of accident. The learned Member of the Tribunal has not considered the same and accordingly held the Appellant / Insurer alongwith with the owner jointly and severally liable to pay the compensation.

5 The learned counsel for the Respondent / Claimant submits that the Appellant / Insurer has failed to prove the documents submitted alongwith the list Exhibit – 44. Appellant / Insurer has not examined any witness before the Tribunal though the burden lies on the Insurer to prove the defence about the breach of the terms and conditions of the policy, the Appellant / Insurer has

utterly failed to substantiate the said defence. The learned Member of the Tribunal has therefore, rightly saddled the Appellant / Insurer with the liability to pay the compensation as worked out alongwith the Respondent / owner jointly and severally. No interference is required.

6 I have also heard the learned counsel appearing for the Respondent / owner.

7 The learned counsel appearing for the Appellant / Insurer has not raised any other point except the point that the learned Member of the Tribunal has not considered the defence raised by the Appellant / Insurer about the breach of the terms and conditions of the policy in its proper perspective. On careful perusal of the record and proceedings, it appears that the Appellant / Insurer has merely produced on record the documents alongwith the list Exhibit – 44. Those documents include one letter issued by Advocate by name Vikas Choudhari from Hisar (Haryana State) and also the verification note issued by the Licensing Authority, Hisar. However, the Appellant / Insurer has not bothered to examine any witness including said Advocate Vikas Choudhari to prove the documents submitted alongwith the list Exhibit – 44. The learned

Member of the Tribunal has therefore, rightly observed that there is absolutely no evidence in respect of the breach of the terms and conditions of the policy. It is well settled that the burden is on the insurance company to prove if the defence is raised to the effect that the driver of the vehicle involved in the accident is not having valid and effective licence at the time of accident. The learned Member of the Tribunal has therefore, rightly recorded a finding in the negative to issue No.2. No interference is called for. There is no merit in the appeal. Hence, the following order:

O R D E R

I. The appeal is hereby dismissed with costs.

II. The Appellant / Insurer has deposited the amount under award before this Court. The Respondent / Claimant is permitted to withdraw the same.

III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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