

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) CA NO.10141/2017

**CIVIL APPLICATION NO.10141 OF 2017
IN
FIRST APPEAL NO. 977 OF 2014**

SHASHIKANT RACHAPPA KALGE
VERSUS
RESHMA YUSUF SAYYED AND ORS

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Advocate for Appellant : Mr.Bedre Vinayak Sudhakar
Mrs. S.B.Warma, Adv., h/f Mr.B R Warma, Adv., for respondent nos.
1 to 7.

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CORAM : P.R. BORA, J.
Dated: August 02, 2017

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PER COURT :-

1. The owner of the insured vehicle has preferred the present appeal against the judgment and order passed by the Motor Accident Claims Tribunal at Latur in Motor Accident Claim Petition No.142/2007 decided on 21st of October, 2008. Vide the impugned judgment, the Tribunal has held the owner alone responsible to pay the amount of compensation to the claimants who have filed the aforesaid claim petition. Though the Insurance Company was party to the said petition, the Tribunal has exonerated the Insurance company from its liability to indemnify the insured on the ground that at the time of the accident, the

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driver, who was driving the offending vehicle, was not holding valid driving license to drive the said vehicle. Aggrieved thereby, as stated above, the owner has filed the present appeal.

2. Along with the appeal, the appellant /applicant has filed Civil Application seeking permission to produce on record additional evidence. The appellant / applicant intends to produce on record the driving license of the driver concerned to show that on the date of the accident, he was authorized to drive a heavy transport vehicle. It is the contention of the appellant / applicant that, at the relevant time, copy of the said license or said license in original could not be produced before the Tribunal and that was the reason that the Tribunal has recorded a finding that the driver was not holding a valid driving license to drive the transport vehicle.

3. Since the Tribunal has exonerated the Insurance Company from its liability to indemnify the insured only on the ground that the owner has breached the policy condition, by allowing the person not holding the license to drive the vehicle, it appears to me that the owner needs to be given an opportunity to adduce the evidence to bring on record and prove that the driver of the vehicle was holding a

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valid driving license to drive heavy transport vehicle on the date of the accident.

4. The said evidence could have been accepted in appeal also, however, though the Insurance Company, which may be the contesting respondent, has been served, has not appeared in the matter. I, therefore, deem it appropriate to remit back the matter to the Tribunal for the limited purpose of permitting the present appellant to place on record the driving license of the driver who was driving the offending vehicle at the relevant time and to get it proved by adducing evidence therefor. It need not be stated that the respondent shall have an opportunity to rebut the said evidence. Save and except the aforesaid aspect about validity of the driving license, all other issues can be looked into by this Court from the available evidence. The Tribunal shall record the evidence restricted to the plea of the appellant that the driver was holding valid driving license at the relevant time and thereafter, remit back the matter to this Court. Since the alleged accident has happened about 11 years back, the Tribunal shall record the evidence and decide the issue, as has been referred by this Court, as expeditiously as

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possible preferably within a period of two months.

5. R & P be forthwith sent back to the Tribunal.

6. The parties, who are present before the Court, shall appear before the Tribunal on 21st of August, 2017.

7. The original driving license and the driving license certificate produced by the appellant before this Court, be returned to the appellant by retaining attested xerox copies of the same on record of this Court.

8. Civil Application stands disposed of. S.O. to 3rd of November, 2017, in the appeal.

(P.R. BORA, J.)

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