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

910 FIRST APPEAL NO. 3582 OF 2016

CHHAYABAI KHUSHAL PATIL AND OTHERS
VERSUS
UNITED INDIA INSURANCE CO. LTD. AND OTHERS

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Advocate for Appellants : Mr. Girish V. Wani.
Advocate for Respondent No.1 : Mr. S. G. Chapalgaonkar.
Advocate for Respondent Nos.2 & 3 : Mr.G.C.Navandar, h/f Mr.A.M.Gholap.

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CORAM : **V. K. JADHAV, J.**
DATE : 04th April, 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, Jalgaon dated 15th June, 2013 in MACP No.18 of 2006, the original Claimants have preferred this appeal to the extent that the Tribunal has exonerated the Respondent / Insurer from the liability to pay the compensation.

3 Brief facts giving rise to the present appeal are as follows:

i) On 23rd January, 2005 at about 08:30 pm on Janmer-Shahpur road near Belphata, deceased Khushal Patil was riding his motorcycle and one Udhav Patil was pillion rider. On way, one tractor bearing registration No.MH-19-C-9553 attached with the trolley/trailer coming from the opposite direction gave dash to the motorcycle of deceased Khushal Patil. In consequence of which, deceased Khushal Patil sustained the head injury. He was immediately shifted to the hospital where he succumbed to the injures during the treatment. The Claimants / legal representatives of deceased Khushal Patil approached the Motor Accident Claims Tribunal by filing MACP No.18 of 2006 for grant of compensation under the various heads.

ii) The Respondent / Insurer has resisted the claim mainly on the ground that the Respondent / driver of the tractor was not holding valid and effective driving licence at the time of accident and as such, the Respondent / Insurer is not liable to pay the compensation.

iii) The Claimants and the Respondent / owner adduced oral and documentary evidence. Respondent / Insurer has not adduced any evidence. The learned

Member of the Tribunal has directed Respondent Nos.1 and 3 i.e. owner and driver to pay the compensation of Rs.14,60,000/- jointly and severally to the Claimants alongwith interest at the rate of 7.5% per annum and dismissed the claim petition as against Respondent No.2 / Insurance Company. The original Claimants have preferred this appeal to the extent of exonerating the Respondent / Insurance Company from the liability to pay the compensation.

4 The learned counsel for the Appellants / Claimants submits that the Respondent / driver of the tractor was holding the valid and effective driving licence to drive the light motor vehicle. Deceased Khushal Patil was riding his motorcycle at the relevant time and he was a third party. In view of the same, it is the statutory liability of the Insurer to pay the compensation to the third party. The learned counsel submits that the defence available under Section 149 of the Motor Vehicles Act only safeguards interest of insurer in certain circumstances by enabling it to recover the same from the insured.

5 The learned counsel for Respondent / Insurer submits that the Respondent / owner has examined the clerk of RTO Office,

Jalgaon and accordingly proved the contents of the driving licence of the driver of the tractor, which is placed at Exhibit – 99. Said Witness Ambure has deposed that Respondent / driver was authorized to drive two classes of motor vehicles i.e. motorcycle and another is light motor vehicle tractor. The learned counsel submits that if the trailer is attached to the tractor, the said vehicle has become the transport vehicle and as such, Respondent / driver was not holding the valid and effective driving licence to drive the tractor attached with the trailer in terms of his driving licence Exhibit – 99. The learned counsel submits that the said breach is fundamental breach and pay and recover order cannot be passed in the facts of the instant case.

6 The learned counsel for the Respondent / Insurer in order to substantiate his submissions place his reliance in the case of ***The Manager, Bajaj Allianz General Insurance Company Vs. Mangala Shantaram Shevale and others***, decided by the Principal Seat of this Court in First Appeal No.116 of 2011 on 3rd October, 2011 (Coram : A.S. Oka, J.).

7 The learned counsel for the Respondent / owner submits that the Respondent / driver was holding valid and effective driving licence to drive the vehicle tractor and the same has been admitted by

Witness Ambure, Clerk RTO Office, Jalgaon.

8 On careful perusal of the pleadings, evidence and the judgment and award passed by the Tribunal, it appears that deceased Khushal Patil was a third party and in the light of the authoritative pronouncement of the Supreme Court in the case of ***S. Iyyapan Vs. M/s. United India Insurance Company Ltd. & Anr***, reported in, ***AIR 2013 Supreme Court 2262***, it is the statutory liability of the Insurer to pay the compensation to the third party. In terms of the defence available under Section 149 of the Motor Vehicles Act, the interest of the Insurer is safeguarded under certain circumstances by enabling it to recover the same from the insured. In paras 18 and 19 of the said judgment, the Supreme Court has made the following observations:

> "18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person

who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

19. In the instant case, admittedly the driver was holding a valid driving licence to drive light motor vehicle. There is no dispute that the motor vehicle in question, by which accident took place, was Mahindra Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Mahindra Maxi Cab, which is a light motor vehicle, the High Court has committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside.”

9 In the case of *The Manager, Bajaj Allianz General Insurance Company Vs. Mangala Shantaram Shevale and others* (supra) relied upon by the learned counsel for Appellants, in the facts of the said case, this Court has observed that discretion of directing the insurer to pay and recover cannot be passed though there is a power vesting to do so.

10 In the instant case, the ratio laid down in the case of *S. Iyyapan Vs. M/s. United India Insurance Company Ltd. & Anr* (supra) squarely applies to the facts and circumstances of the instant case. In view of the same, the impugned judgment and award passed by the Tribunal requires modification. Hence, the following order:

<u>O R D E R</u>

I. The appeal, is hereby partly allowed. No costs.

II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 15th June, 2013 in MACP No.18 of 2006, is hereby modified in the following manner:

> “Respondent Nos.1 and 3 do pay jointly and severally an amount of Rs.14,60,000/- (Rupees Fourteen Lacs and Sixty

> Thousand Only) on account of fault liability including the amount of NFL to the Petitioners alongwith interest at the rate of 7.5% per annum from the date of petition till realization of the entire amount. However, Respondent No.2 / Insurer shall pay the entire amount of compensation of Rs.14,60,000/- (Rupees Fourteen Lacs and Sixty Thousand Only) alongwith interest at the rate of 7.5% per annum from the date of petition till realization of the entire amount to the Petitioners and recover the same from Respondent No.1 / Prakash Pandurang Borase, for which no separate proceedings are required to be initiated."

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. The Claimants are entitled to withdraw the amount, if deposited before this Court.

VI. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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