IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 232 OF 2015
AND
CIVIL APPLICATION NO. 3129 OF 2016

National Insurance Co. Ltd. .. Appellant
vs.
Pravin G. Hire and ors. .. Respondents

WITH
FIRST APPEAL NO. 228 OF 2015

National Insurance Co. Ltd. .. Appellant
vs.
Amol Trimbak Chavan and ors. .. Respondents

WITH
FIRST APPEAL NO. 230 OF 2015

National Insurance Co. Ltd. .. Appellant
vs.
Deepak D. Boraste and ors. .. Respondents

Ms Urmila Sanil for the Appellant-National Insurance Co. Ltd. in all matters.

Ms Yogita Deshmukh for the Respondent -Pravin G. Hire in F.A. 232 of 2015 and for the Applicant- Pravin G. Hire in CA 3129 of 2016.

CORAM : M. S. SONAK, *J*.

Date of Reserving the Order : 11 JANUARY 2017.
Date of Pronouncing the Order : 16 JANUARY 2017.

ORDER :

1] First Appeal Nos. 228 of 2015 and 230 of 2015 are not on board. Taken on board for disposal alongwith First Appeal No. 232 of 2015.

2] Since, the common issues of law and fact arise in all these appeals, the same are disposed of by common judgment and order.

3] Respondent No.1 in each of these appeals, are the claimants who sustained injuries/disabilities on account of accident with a Wagon-R car bearing registration No. MH-04/CD-9562 on 1.8.2007 on Nashik-Dindori Road. The Motor Accident Claim Tribunal (MACT), Nashik by the impugned awards have directed the appellant and respondent Nos.2 to 4 to jointly and severally pay compensation to the claimants, quantified as follows:

1]	Pravin G. Hire (First Appeal No. 232 of 2015)	Rs.1,49,665/-
2]	Amol T. Chavan (First Appeal No. 228 of 2015)	Rs.2,38,600/-
3]	Deepak D. Boraste (First Appeal No. 230 of 2015)	Rs.73,750/-

4] Ms Urmila Sanil, learned counsel for the appellant - Insurance Company has made the following submissions in support of the appeals:

(i) That the appellant Insurance Company ought to have been absolved all its liability to pay any compensation to the claimants because in the present case the Driver of the Wagon-R (motor vehicle) did not have any valid licence to drive such motor vehicle on the date of the accident, i.e., 1.8.2007. She submits that this amounts to breach of essential terms of the insurance policy and therefore, the appellant-Insurance Company was incorrectly made liable for payment of compensation to the claimants. In support of this proposition, Ms Sanil has placed reliance upon the decisions of the Hon'ble Supreme Court in ***United India Insurance Co. Ltd. Vs. Gian Chand and ors.- (1997) 7 SCC 558, United India Insurance Co. Ltd. Vs. Rakesh Kumar Arora – (2008) 13 SCC 298*** and ***National Insurance Co. Ltd. Vs. Kusum Rai and ors. - (2006) 4 SCC 250.***

(ii) The motor vehicle concerned, contrary to the terms and conditions of the insurance policy, was carrying *"fare paid passengers"*. This constitutes a breach of terms and conditions of the insurance policy and therefore, the appellant Insurance Company could not have been made liable for payment of compensation to the claimants; and

(iii) That it is the claimants, who were negligent in driving the motorcycles, which dashed against the motor vehicle. Accordingly, the MACT erred in awarding them any compensation.

5] Ms Yogita Deshmukh, learned counsel for respondent No.1 in First Appeal No. 232 of 2015 and for the applicant in Civil Application No. 3129 of 2016, submitted that neither oral nor documentary evidence was led on behalf of the appellant Insurance Company (Original Opponent No.3). She submitted that the insurance policy of the motor vehicle and extract of driving licence of the driver Sachin Gawali were however produced on record and marked as Exhibits-54 and 55. From such documents, it is evident that the insurance policy was very much in force on the date of accident and further, the driver had a valid driving licence, on the date of the accident. Ms Deshmukh also placed reliance upon the copy of the driving licence of Sachin Gawali annexed by the claimant, whom she represents, to the application seeking withdrawal of the deposited compensation. She submits that from the document at Exhibit-55 as well as the copy of the driving licence appended to the application seeking withdrawal, it is quite clear that the driver had a valid driving licence on the date of the accident and consequently there was no breach of any terms or conditions of the insurance policy. Ms Deshmukh submitted that there is absolutely no evidence on record to indicate that the motor vehicle was carrying any fare paid passengers, so as to infer any breach of terms and conditions of insurance policy. Again, on the aspect of negligence, Ms Deshmukh submits that there is absolutely no evidence in support of such a plea taken by the Insurance Company. For all these reasons, Ms Deshmukh submitted that there is no case made out to interfere with the impugned awards and that these appeals ought to be dismissed with costs.

6] Upon due consideration of the rival submissions and perusal of the material on record, I am satisfied that there is no case made out to interfere with the impugned awards.

7] In this case, no evidence was led by any of the opponents to the claim petition before the MACT. However, it is recorded in the impugned awards that the appellant (original opponent No.3) had produced on record insurance policy of Wagon-R car at Exhibit-54 and extract of driving licence at Exhibit-55. There is no dispute whatsoever with the insurance policy was in force on the date of accident.

8] The document at Exhibit-55 contains the following endorsement in the printed form:

"Driving License Number	*MH15 20010081345*
Date of Issue	*08/01/2001*
Name of the D.L.Holder	*SACHIN GAWALI*
S/W/D of	*SAMPAT*
…….	
……	
Date of Birth	*07/12/1979*
Validity (Non Transport)	*07/01/2021*
Validity (Transport)	*08/09/2013*
Class of Vehicle Held &	*Motor Cycle With Gear*
Endorsement Details	*W.E.F.08/01/2001*
	LMV Transport Goods
	W.E.F. 23/07/2001
……..	
……	

9] Besides, the aforesaid, the endorsement in the printed form, in ink, there are the following endorsements:

" *DOA- 1/8/07*
…..
Previous validity – 23/7/01 to 22/7/04"

10] As against the second endorsement in the ink, there is one initial. The extract of driving licence is dated 28 August 2012. The extract appears in the printed form except the aforesaid two endorsements in ink. It is not known as to why and for what purpose the extract of driving licence makes reference to *DOA- 1/8/07*, which is nothing but the date of the accident. This endorsement has no business to find place on the extract of the driving licence. Similarly, it is not known as to why there is reference to previous validity and the dates '*23/7/01 to 22/7/04*'. As noted earlier, the appellant Insurance Company has not examined any witness in support of its defence. If on the basis of such ambiguous ink endorsements, the Insurance Company seriously wished to contend that the driver had no valid driving licence on the date of accident, then, the minimum that was expected from the Insurance Company was examination of Licensing Authority, i.e., RTO Nashik. The printed endorsement on the extract of the driving licence, very clearly indicates that Sachin Gawali, the driver of the motor vehicle involved in the accident was issued driving licence on 8 January 2001. Such licence pertains to Motorcycle with Gear and LMV Transport Goods. The validity of period of licence to driving LMV Transport Good was indicated as 8 September 2013 and of the motorcycle with the gear (Non Transport) was indicated as 7 January 2021. This is more than sufficient to establish, that, on the date of the accident, i.e., 1 August 2007, the driver was duly licensed to drive the motor vehicle, which was the cause for the accident.

11] The ink endorsements, as noted earlier, are not a part of the printed format. As observed earlier, there is absolutely, no reason for the date of the accident to be mentioned upon the extract of the driving licence. Similarly, the endorsement with regard to previous validity is ambiguous, to say the least. In any case, the entry at the highest suggests that there was some licence, which was valid during the period 23 July 2001 to 22 July 2004. In this case, the date of accident is 1 August 2007. On basis of such an ambiguous entry, the contention of Ms Sanil that the previous licence expired in 2004, was renewed only after the date of the accident, i.e., 1 August 2007, cannot be accepted. The submission is neither backed by any evidence on record nor it can be said that such submission was ever made before the MACT. Ms Sanil submitted that there was no necessity for the Insurance Company to lead any evidence in the matter or to seek any witness summons to the Licensing Authority, i.e., RTO, Nashik. If this be so, obviously, the Insurance Company cannot build any case on the basis of doubtful and in any case, ambiguous entires in the extract of the driving licence dated 28 August 2012. The MACT, upon due appreciation of the material on record has very rightly rejected the contention of the Insurance Company that the driver of the motor vehicle had no licence to drive the motor vehicle on the date of accident. The defence raised by the Insurance Company, in the facts and circumstances of the present case, is far from responsible defence, which is otherwise expected from an Insurance Company.

12] Ms Sanil time and again submitted that it was not necessary for the Insurance Company to either lead any evidence or to summon the Licensing Authority, i.e., RTO Nashik to depose before the MACT, since, the extract of the driving licence dated 28 August 2012 is a public document. In this case, there is absolutely no difficulty in placing reliance upon the extract of the driving licence dated 28 August 2012, insofar as the printed endorsements thereon are concerned. However, the same credibility cannot be extended to the ink endorsements, particularly, because in the extract of the driving license there is no reason to make any reference to the date of the accident. Besides, the further endorsements, relating to the previous validity, to say the least, are totally ambiguous and do not suggest that the driver had no valid driving licence on 1 August

2007 which is the date of the accident. Further, Ms Sanil was not prepared to extend the same credibility to the copy of driving licence appended by one of the claimants to Civil Application NO. 3129 of 2016 seeking withdrawal of compensation already deposited before the MACT. The said document also indicates that the driver Sachin Gawali had necessary license, which was issued on 8 January 2001 and was valid till 7 January 2001 (Non Transport) and 8 September 2013 (Transport). In fact, this document is quite consistent with the printed endorsements in Exhibit-55 produced by the Insurance Company itself. In any case, even if the documents at Exhibit-A to the civil application is excluded form consideration, on the basis of Exhibit-55 produced by the appellant Insurance Company itself, it is established that the driver had a valid licence on the date of the accident and consequently, it cannot be said that there was any breach of terms and conditions of the insurance policy.

13] Again there is absolutely no material on record to conclude that the motor vehicle in question was carrying fare paid passengers in breach of terms and conditions of the insurance policy. The MACT has rightly rejected such defence particularly since there was absolutely no evidence to sustain such a defence.

14] The decisions relied upon by Ms Sanil, state that if there is any breach of the essential terms and conditions of the insurance policy, then the Insurance Company cannot be made liable for payment of compensation. In this case, since it is established that there was no breach of terms and conditions of the insurance policy, the decisions relied upon will not apply.

15] On the aspect of negligence, once again, the appellant Insurance Company has merely raised such a defence without there being any evidence whatsoever to back the same. Despite opportunity, the appellant Insurance Company led no evidence on these aspects and therefore, the appellant Insurance Company cannot succeed upon such grounds in these appeals.

16] No ground was raised as regards quantum of compensation. The grounds raised, as aforesaid, lack merit and deserve no acceptance. The appeals are liable to be dismissed and are hereby dismissed.

17] Accordingly, all these appeals are dismissed. The interim orders, if any, are vacated. The claimants shall be entitled to withdraw the amounts deposited by the appellant Insurance Company before the MACT unconditionally.

18] In view of dismissal of First Appeal No. 232 of 2015, Civil Application No. 3129 of 2016 seeking withdrawal of compensation deposited before the MACT, stands allowed.

(M. S. SONAK, J.)

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