IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1151 OF 2016
WITH
CIVIL APPLICATION NO. 3057 OF 2016

IFFCO Tokia General Insurance Co.Ltd. ...Appellant
Vs.
Mr.Lalit Kamalakar Dalvi & Ors. ...Respondents

Ms.Jyoti Bajpayee for Appellant.
Mr.Sainand V. Chaugule for Respondent Nos.1 and 2.

CORAM : S.C. GUPTE, J.

4 MAY 2017

P.C. :

Appeal is admitted, and taken up for final hearing forthwith, by consent of parties.

2 This first appeal challenges an award of compensation passed by MACT, Mumbai, on an accident claim application. The only grounds opposing the claim before the court below are, firstly, that the driver of the vehicle, which caused the accident, was driving the vehicle on a learning licence and thus, had no valid driving licence. It is submitted that there was nothing on record to show that the driver was accompanied by any person holding a valid driving licence at the material time; and secondly, that whilst computing the income of the deceased, who was said to be doing marketing business with RMP Infotech Pvt.Ltd. and for which income tax record was produced before the court, his alleged income from another firm, namely, one M/s.Lalit Printers, of Rs.5000/- per month was considered, in the absence of any record whatsoever and that this part of

the computation is wholly unwarranted.

3 As far as the question of validity of the licence is concerned, a learning licence is very much a valid driving licence, though it comes with a condition that the learner, whilst driving a vehicle, must be accompanied by a person holding a valid driving licence. The onus to show that the holder of such learning licence, who drove the insured vehicle which caused the accident, was not accompanied by any person holding a valid driving licence at the time of the accident, was on the insurance company. There is no evidence produced to that effect by the Appellant insurer. The only statement made by the witness produced on behalf of the insurer, that too in his cross-examination, was that he did not know whether the driver of the offending vehicle was accompanied by a person holding a valid driving licence at the material time. Simply on the basis of this evidence, it cannot be suggested that the vehicle was driven in breach of the terms and conditions of the policy. As held by the Supreme Court in the case of **National Insurance Company Ltd. Vs. Swaran Singh**[1], a learner's licence is a valid licence within the provisions of Motor vehicles Act.

4 As far as the quantum of compensation fixed by the Tribunal is concerned, learned Counsel for Respondent Nos.1 and 2 (original claimants) agrees to give up the claim of compensation on the basis of income of Rs.5000/- per month from M/s.Lalit Printers. If this income is deducted from the compensation of income made by the Tribunal, the compensation amount works out to Rs.32,62,000/-, instead of Rs.37,90,000/- awarded by the Tribunal. So far as other income, namely, income from RMP Infotech Pvt.Ltd. is concerned, there are authentic

1 **2004 ACJ 1**

documents in Forms 16 and 16A produced by the claimants before the Tribunal, which clearly justify the computation of income from RMP Infotech Pvt.Ltd.

5 The first appeal is, accordingly, partly allowed by reducing the principal amount of compensation from Rs.37,90,000/- to Rs.32,62,000/-. Rest of the impugned award is sustained.

6 In view of the disposal of the first appeal, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)