IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.711 OF 2010

The New India Assurance Company Ltd.
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its Senior Divisional Manager
Shri Vishwas s/o Bansi Gaikwad,
Age 53 yrs., Occ. Service at
The New India Assurance Co.
D.O. No.1 Adalat Road, Aurangabad.

..APPELLANT
[Orig.Resp.No.3]

VERSUS

1. Alka Santosh Gayake,
age 22 Yrs., Occ.household
r/o. Khirdi Tk. Khultabad
District Aurangabad.

2. Vitthal Santosh Gayake,
age 15 months U/g
Resp. No.1.

3. Bajirao Laxman Gayake,
age 60 yrs., Occ.agril.
r/o. as above.

4. Rambhabai Bajirao Gayake,
age 55 yrs. Occ.household,
r/o. as above.

5. Dhrupada Vishnu Dange,
age major, Occ. business
r/o. H.No.293, Shingve Bahula
District Nasik

6. Ajinath Laxman Idhate,
age 23 yrs. Occ. driver
r/o. Shelgaon, Tk. Phulambri
District Aurangabad.

7. Mohammad Salim Mohammad Sarif,
age major, occ.business
r/o. Central Naka, N-6,
C.I.D.C.O., Aurangabad
[Appeal dismissed vide
Registrar's order dtd.
28.08.2012] **..RESPONDENTS**

[Resp.Nos.1-4:Org.Clmts.
Resp.No.5: Org.Resp.No.1
Resp.No.6:Org.Resp.No.2
Resp.No.7:Org.Resp.No.4]

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Mr.A.B.Kadethankar, Advocate for the appellant
Mr.A.S.Bajaj, Advocate for respondent nos.1 to 4.
Respondent no.5 served.
Mr.L.B.Pallod, Advocate for respondent no.6.
Mr.M.D.Shinde, Advocate for respondent no.6.

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CORAM : P.R.BORA,J.
DATE : 06.10.2018

ORAL JUDGEMNT:

1. The Insurance Company has preferred the present First Appeal, challenging the judgment and order passed by the Motor Accident Claims Tribunal at Aurangabad in

Motor Accident Claims Petition No.293/2007, decided on 11th November, 2009.

2. The respondent nos.1 to 4 had filed the aforesaid Claim Petition, seeking compensation under Section 166 of the Motor Vehicles Act on account of death of one Santosh Bajirao Gayake, alleging the same to have been caused in a vehicular accident, occurred on 1st February, 2007, having involvement of Tata Tempo-407 bearing Registration No. MH-14-F-8529, owned by the respondent no.5 and insured with the appellant-Insurance Company. It was the contention of the claimants that the alleged accident had happened because of the sole negligence on the part of the driver of the offending Tempo. The claimants had, therefore, claimed the compensation of Rs.5 lakh from the owner and insurer of the offending Tempo. The Claim Petition was resisted by the appellant-Insurance Company

on several grounds. The defence of the breach of policy conditions was also raised by the Insurance Company. It was the contention of the appellant - Insurance Company that the driver of the offending Tempo was not holding a permanent licence on the day of accident and the driver concerned was holding only learning licence and in such circumstances, the Insurance Company cannot be made liable to indemnify the insured. The Insurance Company had adduced oral evidence of one of its Officers to substantiate the defence raised by it. The Tribunal, however, has turned down the said objection and has held the Insurance Company liable for paying compensation to the claimants jointly and severally with the driver and owner of the offending vehicle. Aggrieved by, the Insurance Company has preferred the present Appeal.

3. Shri Kadethankar, learned counsel

appearing for the appellant-Insurance Company criticized the impugned judgment on the ground that the Tribunal did not appreciate the defence raised by the Insurance Company as well as the evidence adduced by it. The learned counsel submitted that the owner of the offending vehicle was under an obligation not to allow a person holding a learning licence to drive offending vehicle, unless he is accompanied by a person holding valid driving licence. The learned counsel submitted that in his testimony before the Court, the witness examined by the Insurance Company, though, has specifically deposed the aforesaid fact and same has remained undisputed, on surmises, the Tribunal has wrongly turned down the objections raised by the Insurance Company. The learned counsel submitted that in view of the fact that the Insurance Company has sufficiently proved the breach of policy condition by the owner of the vehicle, the Tribunal must have the further order permitting the Insurance Company to recover the said amount from the insured. The learned counsel has, therefore, prayed for allowing the Appeal filed by the Insurance Company.

4. The learned counsel appearing for the respondent has supported the impugned judgment and order.

5. After having perused the impugned judgment, apparently it does not appear to me that any error has been committed by the learned Tribunal in discarding the defences raised by the Insurance Company as about the alleged breach of the conditions of policy by the insured. The Insurance Company admittedly did not adduce any oral evidence in order to substantiate the defence raised by it. In the circumstances, no fault can be found with the findings recorded by the learned Tribunal.

The Appeal, being devoid of any substance, deserves to be dismissed and is accordingly dismissed.

6. Pending Civil Application stands disposed of.

[P.R.BORA]
JUDGE

DDC