IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2777 OF 2010

United India Insurance Co. Ltd.,
Through its Divisional Office,
Divisional Manager, Ahmednagar ..Appellant

Versus

1. Shri Sachin Baban Chinchkar,
Age 19 yrs, Occu. Business,
R/o Sairam Society,
Nagar Kalyan Road, Shivajinagar,
Ahmednagar

2. Sou. Kalpana Rajendra Nirhali,
Age Major, Occu. Business,
R/o. Shivshakti, Zarekar Galli
Ahmednagar. ..Respondents

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Mr. S.V. Kulkarni, Advocate for Appellant.
Mr. R.A. Tambe, Advocate for Respondent No. 1.
Mr. V.S. Bedre, Advocate for Respondent No.2.

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CORAM : P.R. BORA, J.
DATE : 08th OCTOBER, 2018.

ORAL JUDGMENT:-

. The insurance company has challenged the the judgment and award passed in Motor Accident Claim Petition No. 475 of 2006 passed by the Motor Accident Claims Tribunal at Ahmednagar on 07.11.2009.

2. The insurance company has challenged the impugned judgment and award on two grounds. First is that though the insurance company had raised a

specific defence as about the breach of policy condition by the insured in allowing a person not holding a valid driving licence on the date of accident to drive the jeep involved in the alleged accident and though by adducing necessary evidence in that regard, the plea so raised was sufficiently proved by the insurance company, the Tribunal has failed in passing the appropriate order directing the insurance company first to pay the amount and then to recover it from the insured. Second ground is that the Tribunal has failed in considering that the FIR in relation to the accident in question was filed after the long lapse of two months, which has created serious doubts about the involvement of the jeep in the alleged accident.

3. Shri Kulkarni, the learned counsel appearing for the insurance company took me through the defence taken by the insurance company in its written statement, more particularly in Para 12 of its written statement and then to the evidence of Avinash Ganorkar, the witness examined by it before the Tribunal. The learned counsel submitted that the insurance company has undoubtedly proved that on the date of accident, the driver of the

offending jeep was not holding any valid and effective driving licence. The learned counsel further submitted that though the accident happened on 01.08.2006, the FIR of the said incident was lodged on 04.10.2006 i.e. after the period of two months. The learned counsel further submitted that there is absolutely no explanation as about the delay caused in filing the FIR and on that ground alone the FIR was liable to be disbelieved.

4. Shri Tambe, the learned counsel appearing for the original claimant resisted the submissions made by the learned counsel for the insurance company. The learned counsel submitted that the delay which had caused in filing the FIR is explicit from the contents of the FIR itself and no further explanation is warranted. The learned counsel submitted that the original claimant was injured to such an extent that he could not immediately file the FIR in the matter. The learned counsel further submitted that the owner of the vehicle has not disputed the involvement in the vehicle and no contrary evidence has come on record to disbelieve the averments of the claimant as about the involvement of the offending jeep in

occurrence of the alleged accident.

5. The learned counsel further submitted that though the claimant may not have filed any independent appeal challenging the impugned judgment, considering the fact that the Tribunal is cast with the burden to assess just and fair compensation, it may be considered that the Tribunal has not appropriately determined the amount of compensation and the adequate enhancement is sought in the amount of compensation. In so far as the issue of driving licence is concerned, the learned counsel submitted that based on the evidence on record, the Tribunal has passed the correct and reasoned order and no interference is required in the order so passed.

6. I have given due consideration to the submissions made by the learned counsel appearing for the parties. It is not in dispute that the insurance company had raised a specific defence that the driver of the offending jeep was not holding a valid and effective driving licence on the date of accident. The owner had appeared in the Motor Accident Claim Petition before the

Tribunal and has contested the said petition. It is also revealed from the record that the witness examined by the insurance company in order to prove the breach of policy condition by the owner was duly cross-examined by the said owner.

7. The evidence which has come on record undoubtedly establishes that though the driver was holding a driving licence prior to the date of accident and the said driving licence was subsequently renewed, on the date of accident there was no valid and effective driving licence with the driver of the offending jeep.

8. The learned counsel for the insurance company has relied upon the judgment of the Hon'ble Apex Court in the case of ***"Singh Ram Versus Nirmala and Ors, AIR 2018 SC 1290",*** wherein the Hon'ble Apex Court has considered the law in this regard and the previous judgments on the issue and has reiterated that in such cases the breach must be held to have been proved and though the insurance company can be made liable to first pay the amount of compensation to the claimant, the subsequent order needs to be passed permitting the

insurance company to recover the said amount from the owner of the vehicle. Such an order has been admittedly not passed in the present matter. It appears to me that in view of the law laid down by the Hon'ble Apex Court in the aforesaid judgment and considering the evidence brought on record by the insurance company, such an order needs to be passed and the impugned judgment and award needs to be modified to that extent.

9. In so far as the objection raised by the insurance company as about the delay in lodging the FIR which according to it, is potent of creating doubt about the happening of the alleged accident itself and more particularly the involvement of the jeep in the said accident is concerned, I do not find any substance in the objection so raised. The evidence which has come on record clearly establishes that the insured vehicle was involved in the alleged accident and mere delay in lodging the FIR would not be sufficient to absolve the involvement of the offending vehicle in occurrence of the alleged accident. The said objection thus deserves to be rejected and it is accordingly rejected.

10. The submission which was made by the learned counsel that the Tribunal has not considered certain aspects and which has resulted in not awarding the just and fair compensation is concerned, I am not convinced with the submission so made by the learned counsel. I am, therefore, not inclined to consider his request in the present appeal. For the reasons stated above, the following order is passed:

ORDER

i) The appellant-insurance company is held entitled to recover the amount of compensation which may be paid by it along with interest accrued thereon to respondent no.1 herein in compliance with the award passed in Motor Accident Claim Petition No. 475 of 2006, from respondent no.2 herein.

ii) Respondent no.2 shall pay the aforesaid amount within two months on written demand made by the appellant-insurance company in that regard, failing which the insurance company shall be entitled to receive interest on the aforesaid amount at the rate of 9% p.a. from the date of making such demand till its realization.

iii) The amount deposited by the appellant-insurance company in this Court in the present appeal is permitted to be withdrawn by respondent no.1 along with interest accrued thereon.

iv) The appeal stands allowed in the aforesaid terms.

(P.R. BORA, J.)

Mujaheed//