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

FIRST APPEAL NO. 1280 of 2014

The National Insurance Company Ltd.
Through its Divisional Manager
Divisional Office at Hazari Chamber, .. Appellant / Orig.
Railway Station Road, Aurangabad .. Respondent no.3

versus

1. Vijaymala Dyaneshwar Wahul,
Age : 40 years, occup.Household,

2. Shewantabai Wamanrao Wahul,
Age : 69 years, occup. Household,

3. Kunal Dyaneshwar Wahul,
Age: 21 years, Occu: Education,

4. Jyoti Dyaneshwar Wahul,
Age: 20 years, Occu: Education

5. Anil Dyaneshwar Wahul
Age: 19 years, Occu: Education

6. Pradnya Dyaneshwar Wahul
Age: 18, Occu: Education,
U/g of Resp. No.-1

7. Kiran Dyaneshwar Wahul,
Age:17 years, Occu: Education,
U/g of Resp. No.-1

All r/o Shahunagar, Ramnagar,
N-2, CIDCO, Aurangabad,
Dist. Aurangabad

8. Indramani Raghunath Yadav,
Age: 39 years, Occu: Driver,
R/o. R. No. 22, Indira Nagar,
W/E, Thane (W).

9. Bansidhar R. Yadav,
Age: Major, Occu: Business,
R/o. R.No.-1, Kalka Seth Ki Chowl,
Panchpakadi, Thane …..Respondents

WITH
FIRST APPEAL NO. 1281 of 2014

The National Insurance Company Ltd.
Through its Divisional Manager
Divisional Office at Hazari Chamber, .. Appellant / Orig.
Railway Station Road, Aurangabad .. Respondent no.3

versus

1. Diksha Sunil Pradhan,
Age : 29 years, occup.Household,

2. Cchakuli Sunil Pradhan,
Age: 6 years, Occu: Nil,
U/g of Resp. No-1.

3. Sumit Sunil Pradhan,
Age: 4 years, Occu: Nil,
U/g of Resp. No-1.

4. Mathurabai Sitaram Pradhan,
Age: 49 years, Occu; household,

5. Sitaram Sagan Pradhan,
Age; 57 years, Occu: Nil

All R/o Shahunbagar, Reamnagar,
N-2, CIDCO, Aurangabad.

6. Indramani Raghunath Yadav,
Age: 39 years, Occu: Driver,
R/o R. No-22, Indira Nagar, W/E,
Thane (E)

7. Bansidhar R. Yadav,
Age: Major, Occu: Business,
R/o. R.No.-1, Kalka Seth Ki Chowl,
Panchpakadi, Thane

Mr. S. P. Chapalgaonkar, Advocate for appellant
Mr. Shantaram R. Dheple, Advocate for respondents no. 1 to 7 in first appeal no. 1280 of 2014 and respondents no. 1 to 5 in first appeal no. 1281 OF 2014

CORAM : SUNIL P. DESHMUKH, J.
DATE : 9th April, 2018

ORAL JUDGMENT :

1. These are appeals preferred by insurance company - original respondent no. 3 in motor accident claim petitions bearing no. 524 of 2008 and 594 of 2008 aggrieved by decision rendered by Member, motor accident claims tribunal, Aurangabad on 16-07-2012.

2. Learned counsel for appearing parties point out that despite notices on respondents no. 1 and 2 herein (original respondents no. 1 and 2 in claim petitions) having been served with intimation that matters are likely to be taken up for final hearing at admission stage, yet said respondents no. 1 and 2 have not put in their appearance and as such, final hearing is being proceeded with, with consent of appearing parties.

3. Learned counsel for appearing parties, after arguing the case, however, resile to the situation that so far as quantum of income is concerned, it would not be a case wherein it can be said that the decisions reached by the tribunal are without any evidence supporting the claims as have been granted. In the

circumstances, according to learned counsel, the matter gets narrowed down only to the sharing and/or bearing of responsibility of payment of compensation.

4. It is common case of the claimants in the petitions that two deaths had been caused in accident which had taken place on 26-02-2008. The offending vehicle bearing registration no. MTT-6582 had collided on car bearing registration no. MH-20-AG-9289 whereunder two persons travelling, namely, Dnyaneshwar and Sunil, had died. Dnyaneshwar had been a labour contractor and had also been the owner of the car. He had been earning about Rs.3,00,000/- per annum. Sunil had been an employee with Dnyaneshwar and had been earning about Rs.4,500/- per month doing labour work. Respective claimants were wholly dependent on income of the two deceased persons. According to the claimants, they have been deprived of income with the death of the two persons. As such, claims had been raised demanding compensation to the tune of Rs.30,00,000/- and Rs.6,00,000/- respectively. Offending vehicle the tanker had been owned by, respondent no. 2 in both the claim petitions, who is respondent no. 9 and 7 respectively in the two first appeals. Said vehicle was insured by original respondent no. 3 – present appellant. Respondents no. 1 and 2 in the claim petitions who were respectively driver and owner

despite service of notice had not appeared and the proceedings went *ex-parte* against them.

5. Present appellant (original respondent no. 3) had resisted claims and contended that it is a case of contributory negligence and original respondent no. 1 alone had not been rash and negligent. Insurer (insurance co.) of car owned by deceased Dnyaneshwar (claim petition no. 524 of 2008) ought to have been a party to the claim petitions. Dnyaneshwar was not holding valid and effective driving licence and neither had disclosed about holding valid and effective licnece.

6. According to learned counsel Mr. Chapalgaonkar appearing on behalf of appellant-insurance company, evidence does with a degree of certainty show that it cannot be conclusively said that respondent no. 1- driver of the vehicle insured with insurance company had on the date of accident held a valid and effective driving licence. If validity and efficacy of the licence of respondent no. 1 – driver, purported to have been placed on record is doubtful, then liability under the policy and its terms and conditions would not be incurred by the appellant-insurance company. Liability will have to be wholly borne by respondents no. 1 and 2 i.e. driver and owner of the offending vehicle. He submits that there is consistent non appearance on their part in

the legal proceedings. He adverts to observations by the tribunal as contained in paragraphs no. 27 and 28 of the judgment and submits that the appellant-insurance company has sufficiently brought forth in evidence that licence placed on record on behalf of the claimants cannot be said to be genuine licence or for that matter, he submits, it would emerge that it is a fake driving licence. Learned counsel, therefore, urges to consider that since the entire amount of compensation claimed by the claimants has been deposited in this court, it would be appropriate that balance of the amount not yet withdrawn by the claimants be refunded to the appellant – insurance company and the same be directed to be recovered by the claimants from respondents no. 1 and 2 and further order that the amount paid to the claimants be directed to be recovered by appellants from respondent no. 1 and 2.

7. On the other hand, Mr. Dheple learned counsel appearing on behalf of respondents no. 1 to 7 and 1 to 5 in respective first appeals who are claimants in claim petition no. 524 of 2008 and 594 of 2008 respectively submits that while occurrence of accident involving offending vehicle is an admitted position, for licence not being genuine or it being allegedly fake, liability to bear responsibility and pay compensation under the policy cannot be shirked by the appellant-insurance company. He

submits that in any case, driving licence of respondent no. 1, whether valid or otherwise, would hardly affect claims of the claimants on merits for compensation.

8. He submits that in the first place it had not been defence in the written statement of appellant-insurance company in the claim petition at all that respondent no. 1 had never held any driving licence. He submits, validity of licence being held by driver of offending vehicle is being questioned with such kind of evidence which has friable structure and would not be conclusive. It is not a case that respondent no.1 did not have licence at all.

9. Learned counsel goes on to submit, claimants or for that matter respondents no. 1 and 2 have lost opportunity to counter so called evidence in respect of the same. Had the written statement specifically referred to that respondent no. 1 had not held or possessed driving licence, opportunity to give proper evidence could have been available to the claimants as well as respondents no. 1 and 2. In the absence of pleadings, such a defence and resistance by appellant – insurance company is not open and available to be adduced.

10. He submits that in such a case, while validity of licence had been doubted as it had been sought to be projected that

concerned licence number had been issued in the name of some other person on a different date than the one appearing on the licence produced in the name of respondent no.1, it was incumbent that evidence with respect to issuance of licence on the date appearing on the licence of respondent no. 1 placed on record ought to have been brought forth in order to substantiate the claim that on the date shown on the licence, had never been issued in the name of respondent no.1. In such a case, contention of appellant that it does not bear any responsibility to compensation is untenable.

11. He submits that paragraphs no. 27 and 28 of the tribunal's judgment show that a plausible view has been taken looking at the intention underlying the benevolent legislation like the Motor Vehicles Act. He, therefore, urges not to indulge into the request being made under the appeals not to hold appellant liable to avoid responsibility pursuant to the award passed by the tribunal.

12. It has been observed that driving licence Exhibit 44 had been issued on 11-07-1999 and had been valid upto 10-07-1999. Respondent no. 1 had also been authorized to carry heavy goods as per the driving licence issued to him. The tribunal has appreciated that the evidence as adduced, is

deficient to disprove licence produced on record and for the absence of specific pleadings in written statement, the so called evidence adduced would not be considered nor would it conclusively establish absence of licence in favour of respondent no. 1. The appellant is insurer of vehicle and as such, would not be able to absolve itself of responsibility under the policy. The tribunal has further observed that driver of the offending vehicle had been rash and negligent in driving. Submissions on behalf of the claimants appear to carry a lot of substance. None of the parties have referred to any decision in support of their respective submissions. In the circumstances, it does not appear that with the appreciation of facts and evidence on record, the tribunal has committed grave error sufficient to call for reversal of decision, in the first appeals.

13. In view of aforesaid, balance amount, if any, remaining after withdrawal made by the respondents – claimants, may be withdrawn by them with accruals thereon.

14. First appeals are accordingly disposed of.

SUNIL P. DESHMUKH,
JUDGE

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