IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1186 OF 2016
WITH
CIVIL APPLICATION NO. 3940 OF 2015

The New India Assurance Co. Ltd. ... Appellant
V/s.
Gangubai Balu Waghe & Anr. ... Respondents

WITH
CIVIL APPLICATION NO. 1145 OF 2018
IN
FIRST APPEAL NO. 1186 OF 2016

- Mr.D.R. Mahadik for the Appellant.
- Mr.Avinash M. Gokhale a/w. Ms.Kamini Pansare for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the parties.

2] This Appeal is preferred against the judgment and award dated 08/05/2015 passed by the MACT Thane, thereby allowing MACP No.454 of 2008. By the said award, the Tribunal has granted the compensation of Rs.4,77,000/- to the Respondents-Claimants with interest at the rate of 7% p.a. from the date of filing of the claim till its realization.

3] The Appeal is preferred by the Appellant-Insurance Company, mainly on the ground that the driver of the offending vehicle was not having valid driving licence. In that respect, the evidence was led the Insurance Company of the Clerk from RTO Office and he has deposed that upto 1990, the driver was having valid licence of heavy goods vehicle. Thereafter, NOC was issued and papers were transferred to RTO Thane. He does not know whether, thereafter the driver has renewed his driving licence or not.

4] The Tribunal has therefore held that the burden was up on the Appellant-Insurance Company to prove the fact that the driver was not having the valid driving licence, which burden was not discharged, and therefore, the inference can be drawn that driver of the offending vehicle was having valid driving licence.

5] According to learned counsel for the Appellant, such inference cannot be drawn in the facts of the present case. However, in my considered opinion, no fault can be found in the impugned judgment of the Tribunal. Moreover, the law is well settled that the Insurance Company is at liberty to recover the amount of compensation, by following due process of law, from the owner of the offending vehicle. To that extent, the necessary order 'Pay and Recover' can be passed in this Appeal, but so far as the Claimants are concerned, they are entitled to get the amount of compensation which has to be paid in the first instance by the Insurance Company and thereafter, Insurance Company can recover the same from the owner of the offending vehicle.

6] The owner of the vehicle, namely, Respondent No.3 is duly served but has not appeared. Hence, in view of the settled position of law, in this Appeal as regards the payment of compensation to the Claimant and the quantum of the compensation as awarded by the Tribunal does not call for any interference, hence, stands dismissed. However, liberty is granted to the Appellant to recover the amount of compensation from Respondent No.3 after following due process of law.

7] The Appeal is disposed of in above terms.

8] It is submitted that, Respondent No.2 has already expired and his name is deleted from the Appeal Memo. Hence, Respondent No.1 is held entitled to withdraw the entire amount.

9] In view of disposal of the Appeal, nothing survives in the Civil Application(s), hence stand disposed of.

10] The statutory amount of Rs.25,000/- deposited in this Court, if not transferred, be transferred to the concerned Tribunal along with accrued interest, if any.

[DR.SHALINI PHANSALKAR-JOSHI, J.]