IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1319 OF 2003

. M/s. Oriental Insurance Co. Ltd.,
having its registered and head office
at Oriental House,
A-25/27, Asaf Ali Road, New Delhi – 110002
Branch Manager, Branch at Nanaded,
Divisional Office at Inder Prakash Building
Adalat Rd., Aurangabad 431005,
Through it's Sr. Divisional Manager &
Constituted Attorney
Mr.A.A.Hallari, age: 50 yrs. ..Appellant
(Orig. Respondent No.2)

VERSUS

1. Bhagirthabai w/o Trimbak Gaikwad
age: 40 yrs., Occu.: Household R/o.Borgaon (Aknak)
Tq.Loha, Dist.Nanded.

2. Ramesh s/o Trimbak Gaikwad
age: 15 yrs., Occu.: Education U/G. of his real
mother
Bhagirathbai w/o. Trimbak Gaikwad

3 Rangnath G.Kakade
aged major, Occu.: Business R/o. Degadgaon,
Tq.Loha, Dist.Nanded. .. Respondents
(Respondent Nos.1 & 2
- Orig. Claimants Nos.1 & 2)

(Respondent No.3 -
Orig. Respondent No.1)

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Advocate for Appellant : Shri V.N.Upadhye
Advocate for Respondent Nos.1 to 3 : Shri G.N.Chincholkar

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CORAM : P.R.BORA, J.

DATE: 18th February, 2019

ORAL JUDGMENT:-

1. The Judgment and award passed by the Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No.309 of 1997 decided on 09.10.2002 is challenged by the appellant Insurance Company in the present appeal.

2. The aforesaid claim petition was filed by the present respondent Nos.1 and 2 claiming compensation on account of the death of Trimbak Maroti Gaikwad alleging the same to have been caused in a vehicular accident happened on 01.04.1997 having involvement of Tempo bearing registration No. MH-26/8474 owned by present respondent No.3 and insured with the appellant Insurance Company. Respondent Nos.1 and 2, who are hereinafter referred to as the claimants, had claimed the compensation of Rs.2,00,000/- from the owner and insurer of the offending Tempo alleging that the alleged accident happened because of sole negligence on the part of driver of offending Tempo. The petition so filed was resisted by the appellant Insurance Company mainly on the ground that the Insurance Company was not liable to indemnify the insured since he had permitted a person not holding valid driving licence on the date of accident to drive the offending tempo and had thus committed breach of policy condition thereby exonerating the Insurance

Company from its liability to indemnify him. The Tribunal, however, discarded the said objection and held the appellant Insurance Company jointly and severally liable to pay the amount of compensation determined by it to the claimants. As has been observed by the Tribunal, there was no breach of the condition of the insurance policy since subsequently the driving licence was renewed. Aggrieved thereby, the Insurance Company has preferred the present appeal.

3. Shri V.N.Upadhye, learned Counsel appearing for the Insurance Company placing reliance on three Judgments of the Hon'ble Apex Court; first in the case of ***Ram Babu Tiwari Vs. United Indian Insurance Co. Ltd. [AIR 2009 SC 1264]****;* second in the case of ***Pappu and others Vs . Vinod Kumar Lamba and another [AIR 2018 SC 592]*** and the third in the case of ***National Insurance Company Ltd., Vs. Swaran Singh [2004 1 JT 109]*** submitted that in view of the fact that the driver of the offending Tempo was not holding valid driving licence on the date of accident and the same was renewed after the period of four months, the Insurance Company in any case could not have been held jointly and severally responsible to pay the amount of compensation to the claimants. The learned Counsel submitted that the Tribunal has recorded an erroneous finding that there was no breach of policy condition. The learned Counsel, in the

circumstances, prayed for exonerating the Insurance Company from its liability to indemnify the insured and thus allow the appeal filed by it. In the alternative, the learned Counsel prayed for an order giving liberty to the appellant Insurance Company to recover the amount of compensation, if directed to be first pay by it, from the owner of the offending vehicle.

4. Shri Chincholkar, learned Counsel appearing for respondents – claimants conceded the legal position as has been canvassed by Advocate Shri Upadhye and submitted for passing appropriate orders.

5. I have given due consideration to the submissions made by learned Counsel appearing for the appellant Insurance Company. I have perused the impugned Judgment as well as the evidence on record. On perusal of the evidence recorded before the Tribunal, there seems no doubt that on the date of accident i.e. on 01.04.1997, the person, who was driving the offending Tempo namely Shivaji Namdeo Sakhare was not holding any licence to drive the offending Tempo. The material on record further reveals that said Shivaji was holding a valid driving licence only upto 21.07.1994 and the same was not renewed thereafter till 19.08.1997. It is thus evident that on the date of accident, said

Shivaji was not holding any driving licence. Though, as noted herein above, the Insurance Company has relied upon three Judgments of the Hon'ble Apex Court, I prefer to refer the latest Judgment of the Hon'ble Apex Court, which is also a Judgment by larger Bench of the Hon'ble Apex Court in the case of ***Pappu and others*** (supra). In the aforesaid Judgment, the Hon'ble, Apex Court has held that the Insurance Company is entitled to take a defence that the offending vehicle was driven by an unauthorized person or that the driving person did not have a valid driving licence. In the present case, the Insurance Company has specifically raised the said defence. The Hon'ble Apex Court has further held that the onus would shift on the Insurance Company only after owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorized by him to drive the vehicle and was having a valid driving licence at the relevant time. In the instant case, the owner has not discharged the said initial burden on him. In the circumstances, it was not necessary on part of the appellant Insurance Company to adduce any more evidence. The material, which has come on record, as noted by me herein above, undoubtedly establishes that the driver of the offending vehicle renewed his licence on 19.08.1997 though validity of his earlier licence had expired on 21.07.1994. It was thus undoubtedly proved that on the date of accident i.e. 01.04.1997, the driver of the offending vehicle was not holding any driving licence. In the circumstances, as has been held by the Hon'ble Apex Court in the case of ***Ram Babu Tiwari*** (supra), the appellant Insurance Company would not be liable to indemnify the insured. The Tribunal has hence committed an error in holding the appellant Insurance Company jointly and severally liable to pay the amount of compensation to the claimants in Motor Accident Claim Petition No.309 of 1997.

6. The next question, which falls for consideration is whether any liability therefore can be imposed upon the appellant Insurance Company in regard to the payment of compensation to the claimants. In view of the decision of the Honble Apex Court in the case of ***Swaran Singh*** (supra), the appellant Insurance Company cannot escape from its liability so far as a third party is concerned in view of provision under Section 147 and 149 of the Motor Vehicles Act. In view of the law laid down by the Hon'ble Apex Court in the aforesaid case, the appellant Insurance Company is bound to pay the amount of compensation to the claimants and would be entitled to recover the said amount from the driver and owner of the offending vehicle. The Tribunal, has erred firstly in holding the appellant Insurance Company jointly

and severally liable to pay the amount of compensation to the claimants and secondly in not giving any direction that the insurer can recover the amount of compensation paid to the claimants from the insured. Accordingly, the appeal is allowed to the extent that the compensation amount as awarded by the Tribunal shall be paid and satisfied by the appellant Insurance Company in the first instance with liberty to recover the said amount from the owner of the offending vehicle in accordance with law. The amount of compensation deposited by the appellant Insurance Company in this Court is permitted to be withdrawn by the claimants alongwith interest accrued thereon, if already not withdrawn by them.

(P.R.BORA)
JUDGE

SPT