IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

20 FIRST APPEAL NO.1576 OF 2012

ICICI Lombard General Insurance Company Ltd.
Through its Officer,
Mr. Pravin Gangadharrao Igave,
Age : years, Occ. Service,
R/o : C/o ICICI Lombard General Insurance Company Ltd.
Alakhanda, Ist Floor, Adalat Road,
Aurangabad. ...Appellant.

VERSUS

1) Madhukar s/o Mohanrao Iname,
Age 39 years, Occupation Service,
R/o Pan Ranjangaon Tq. Paithan
Dist. Aurangabad.

2) Shaikh Hussain s/o Sk. Sandu,
Age Major, Occupation Business,
R/o Znarayanpur Waluj
Tq. Gangapur Dist.Aurangabad. ...Respondents.

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Advocate for Appellant : Mr. R. H. Dahat and S. S. Patil
Advocate for Respondent No.1 : Mr. Moinuddin Shaikh holding for Mr. S. S. Kazi.
Advocate for Respondent No.2 : Mr. T. Bhosle.

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 01-07-2019.

ORAL ORDER :

1. Present appeal has been filed by original respondent No.1

challenging its liability to pay the amount of compensation jointly and severally with respondent No.2 as directed in the Judgment and award passed by learned Chairman, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P.No. 469 of 2009 dated 18-01-2012

2. Taking into consideration the scope of the present appeal, the facts are narrated in short. The original claimant – present respondent No.1 had met with an accident on 16-11-2008 when he was proceeding on his motorcycle. He was dashed by another motorcycle which was driven by one deceased Shaikh Mohammad Hanif. That vehicle was belonging to original respondent No.2 and it was insured with the present appellant. As a result of the dash which was given by the motorcycle owned by respondent No.2 bearing No.MH-20/AP-4828, the applicant had sustained serious injuries to his right eye, head and other parts of the body. His right leg was fractured. He has taken treatment and spent huge amount. At that time he was 36 years old, serving as supervisor and getting Rs.6000/- per month as salary. He had claimed compensation of Rs.5,00,000/-.

3. Present appellant – original respondent No.1 had denied all the contentions. Age, occupation and income of the claimant denied, and a statutory defence was taken that the deceased was not holding valid and effective driving licence to drive the motorcycle on the date of the

accident, and therefore there is breach of terms of policy.

4. Taking into consideration the rival contentions issues were framed. Claimant has led evidence. Respondent No.1 has also led oral as well as tried to lead documentary evidence. After considering all the evidence and hearing both sides, the learned Tribunal has come to the conclusion that the claimant had sustained serious injuries in the motor vehicle accident and the said accident was caused by the rash and negligent driving on the part of driver of motorcycle owned by respondent No.2 and insured with respondent No.1. Amount of Rs.2,85,000/- was granted as compensation and though it was held that the respondent No.1 has proved that there is breach of terms of policy yet after holding the respondent No.1 liable to pay compensation jointly and severally with respondent No.2, order of pay and recover has been passed. It will not be out of place to mention here that, the insurance company is challenging this order of pay and recover in this appeal.

5. Heard learned advocate for the appellant and learned advocates appearing for respondents No.1 and 2.

6. Taking into consideration the limited scope in the first appeal, following points arise for determination, findings / reasons for the same

are as follows ;

> "Whether the learned Tribunal was justified in passing the award of pay and recover ?"

It has been vehemently submitted on behalf of the appellant that when it has been proved by the insurance company that the deceased who was driving the offending motorcycle had no driving licence on the date of the accident then the insurance company ought not to have been made liable jointly and severally with respondent No.2. He also submitted that the respondent No.2 had not led any evidence to prove that deceased had driving licence. This is on the background that the notice was issued by the insurance company to respondent No.2 by RPAD but then that notice was refused to be accepted by him in which the respondent No.1 had called upon him to produce the driving licence of the original respondent No.3. Therefore, when a specific opportunity was given to original respondent No.2 to produce that valid and effective licence, if any, he has not utilized that opportunity. Therefore, the defence of the insurance company was accepted. Under such circumstance, the insurance company ought not to have been fasten with the liability.

7. Per contra, the learned advocate appearing for the respondent No.1 supported the reasons given by the Tribunal and submitted that,

the order of pay and recover has been rightly passed.

8. It is to be noted that, respondent No.2 was duly served with the petition before the learned Chairman but he had failed to file written statement. Specific contention was raised by the insurance company that there is breach of terms of policy by respondent No.2 and in order to support the same contention, evidence was led by the insurance company. The insurance company has examined its legal manager and then produced documentary evidence to show that it had issued notice to the respondent No.2 to produce the driving licence of the driver who was driving the offending vehicle on the date of the accident. But it appears that the respondent No.2 had refused to accept that notice and therefore it will have to be taken as a good service. That was the opportunity available to respondent No.2 to produce the driving licence and in a way to show that there is no breach of any term of the policy. The second opportunity was available to him when he was served with the summons in the case then also he has not taken that opportunity. It will not be out of place to mention here that, the original respondent No.2 has not filed any appeal challenging the finding that there is breach of terms of policy. Under such circumstance we need not go further into the details and the said finding arrived at by the learned Chairman is required to be endorsed.

9. Now the question is only a regards whether the Tribunal was justified in passing the order of pay and recover by making the respondent No.1 liable to pay the amount of compensation. The first and the foremost fact that will have to be put on record is that, when the claimant had received injuries due to the rash and negligent act on the part of the driver of the offending vehicle which was insured with the respondent No.1 then the rights of the claimant to get the compensation from respondents No.1 and 2 will have upper hand. The insurance company can claim exoneration under those statutory circumstances and one of it is the breach of terms of policy. At the cost of repetition, it can be said that, in this case the insurance company was successful in proving that there is breach of terms of policy. In fact the terms of policy is the contract between respondents No.1 and 2 and the claimant cannot have any knowledge about the details of the terms of the policy. Though the general terms are that the owner of the vehicle should give his vehicle to a licenced driver is there but it is not expected that the claimant will have knowledge about the details of the driving licence of the driver of the offending vehicle. The learned Chairman has relied on the decisions in, *Oriental Insurance Company Ltd. Vs. Pandit Nagarao Ade and Others, 2010 AC 869 (Bom.), National Insurance Co.Ltd. Vs. Swaran Singh & Ors, 2004 (1) AIR 272*

(SC), and Oriental Insurance company Ltd. Vs. Angad Kol and Others, 2009 (2) T.A.C.4 (S.C.), and then passed the order of pay and recover.

10. Taking into consideration the fact that, reliance was placed on the Judgment of Hon'ble Supreme Court, no fault can be found with the said order. No irregularity or illegality has occurred so as to interfere with the order passed by the learned Tribunal, hence the point is answered in the negative. The first appeal stands dismissed. No order as to costs.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.