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

First Appeal No. 0978 of 2012

District : Aurangabad

ICICI Lombard General Insurance Company Ltd., Through its Legal Officer, Mr. Rahul Sanap, Age : 26 years, Occupation : Service, R/o. C/o. ICICI Lombard General Insurance Company Ltd., Alaknanda, Ist Floor, Adalat Road, Aurangabad. .. Appellant (Original respondent no.03)

versus

1. Dhansing Rajaram Bhadiye, Age : 33 years, Occupation : Agriculture, R/o. Bhokardan, Dist. Jalna, At present R/o. c/o. Chainsing Satavan, N-11, HUDCO, Dist. Aurangabad.
2. Raju Ashok Jadhav, Age Major, Occupation Driver, R/o. Divashi Pimpalgaon, Taluka Gangapur, Dist. Aurangabad.
3. Satish Mahadu Hiwale, Age : Major, Occupation : Owner, R/o. Pandhali, Taluka & Dist. Buldhana.

.. Respondents (No.01 - Original claimant.

No.02 - Original respondent no.01 - driver of the vehicle.

No.03 - Original respondent no.02 - owner of the vehicle)

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Mr. Swapnil S. Patil, Advocate, for the appellant.

Mr. Ramesh R. Imale, Advocate, for respondent no.01.

Mr. S.M. Pandit, Advocate, for respondent no.02.

Respondent no.03 served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09TH JULY 2019

ORAL ORDER :

01. Present appeal has been filed by the Insurance Company, challenging the judgment and award passed by the learned Chairman, Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claims Petition No. 484 of 2009, dated 28-02-2012, holding it responsible jointly and severally with respondent no.01 to pay the amount of compensation to the claimant. *[Parties are referred as per their nomenclature before the Tribunal.]*

02. Heard learned Advocate Mr. S.S. Patil appearing for the appellant. Heard learned Advocate Mr. R.R. Imale appearing for respondent no.01. So also, heard learned Advocate Mr. S.M. Pandit appearing for respondent no.02. None for respondent no.03 though served.

03. The only point the appellant - Insurance Company intends to raise is that a specific contention was raised that there is breach of terms of policy since the respondent no.01 was not holding

valid and effective driving license of the offending vehicle which was insured with it on the date of the accident. It is contended that an application was filed by the Insurance Company at Exhibit 46 calling upon respondent no.01 to produce his driving license. However, since he has not produced it, it ought to have been held that there is no fundamental breach of terms of policy. The said fact was also tried to be brought on record by showing that the respondent no.01 was prosecuted for the offence under Section 3, punishable under Section 181 of the Motor Vehicles Act, 1988, for not holding valid and effective driving license. The said point was also not considered by the learned Chairman. Under those circumstances, the learned Chairman erred in holding the Insurance Company jointly and severally liable to pay compensation with respondent no.01.

04. Learned Advocate appearing for respondent no.01 - original claimant supported the reasons given by the learned Chairman while deciding the said issue and submitted that no interference is required in the said order.

05. Taking into consideration the limited scope of the present appeal, following point arise for determination. Finding and reasons for the same are as follows :-

" Whether the Insurance Company has proved that there was fundamental breach of terms of policy requiring its exoneration from liability to pay compensation ? "

06. Though the Insurance Company had taken the statutory defence that the driver of the motorcycle insured with it on the date of accident was not holding valid and effective driving license, it appears that no oral evidence was adduced by calling Regional Transport authorities. A recourse has been adopted by filing an application at Exhibit 46, calling upon respondent no.01 to produce his driving license. Important point to be noted is that while disposing of that application Exhibit 46, it appears that the Tribunal had passed an order giving directions to respondent no.03, that the Company may produce evidence to establish its defence and the respondent no.01 cannot be compelled to produce his driving license. When the said order was available before hand, that means, before the Insurance Company could close its side for evidence; without resorting to leading evidence, unnecessary reliance appears to have been placed on application Exhibit 46. The said order cannot be said to be in favour of the Insurance Company since in clear words, the respondent no.01 was not asked to produce his driving license. If at all such order would have been there and there would have been no compliance of the same by the respondent

no.01, then only there would have been scope for drawing adverse inference against respondent no.01. It can be rather said that the order which was passed on application Exhibit 46 gave a clear idea to the Insurance Company as to what kind of evidence is expected from the Insurance Company. In spite of that order, evidence has not been led. Under such circumstance, the fact cannot be inferred in favour of the Insurance Company.

07. The second part of the fact on which the Insurance Company intended to rely was that the respondent no.01 has been prosecuted for the offence under Section 3, punishable under Section 181 of the Motor Vehicles Act. However, it appears that the learned Chairman has rightly observed that the charge-sheet has not been filed on record and the first information report, Exhibit 40 which has been filed on record, does not spell out that the respondent no.01 is prosecuted under those sections. When no cogent and conclusive evidence has been adduced by the Insurance Company on the said point, the learned Chairman was justified in arriving at a conclusion that the Insurance Company has failed to prove that there was fundamental breach of terms of policy requiring exoneration of the Company from the liability to pay the compensation. The point is, therefore, answered accordingly.

08. There is no merit in the present appeal. It deserves to be dismissed. Hence, the following order:-

(a) The appeal is hereby dismissed with costs.

(b) It is stated that the amount as per award has been deposited by the appellant. Under such circumstance, respondent no.01 - original claimant is allowed to withdraw the said amount.

(Smt. Vibha Kankanwadi)
JUDGE

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