IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2552 OF 2016

New India Assurance Company Ltd.,
A Company Registered Under The
Companies Act and a Subsidiary
of General Insurance Company of
India Ltd. Having one of its Divisional
Office at Adalat road, Aurangbad
Through its authorized signatory. ...Appellant.
(Org.R.No.2)

VERSUS

1. Bhausaheb Bajirao Sultane,
Age 32 years, Occupation Agri. and
Milking, R/o Wadala – Mahadao
Tq. Shrirampur Dist.Ahmednagar.

2. Dattatraya Savleram Sabale,
Age 50 years, Occupation Truck
Driver, R/o shivaji Road, Shrirampur
Dist. Ahmednagar. ...Respondents.
(R.No.1:Org.cla.
R.No.2:Org.R-1)

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Mr. A. B. Kadethankar, Advocate for appellant.
Mr. S. D. Tawshikar, Advocate for Respondent No.1.
Advocate for Respondent No.2- Absent.

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CORAM : SMT.VIBHA KANKANWADI, J.
Date : 15-07-2019.

ORAL ORDER :

1. Present appeal has been filed by original respondent No.2 – Insurance Company challenging the Judgment and award dated 06-02-2016, passed by learned Member, motor Accident Claims Tribunal, Shrirampur, in Motor Accident Claim Petition No.202 of 2013, on the point of order of pay and recover.

2. The present respondent No.1 who is the original claimant had filed the said petition under Section 166 of Motor Vehicles Act for getting compensation for the injuries sustained by him in motor vehicular accident. He had come with a case that, he was 32 year old agriculturists and a person doing in milk business, earning about Rs.25,000/- to Rs.30,000/- per month from milk business and Rs.4,00,000/- per annum from agriculture. He was proceeding on his motorcycle bearing No.MH-14/K-1081 on 16-03-2013 at about 11.00 a.m. from Shrirampur to Wadala-Mahadev. When he was within the limit of Shrirampur City, a truck bearing No.MH-17/A-7217 came in high speed rashly and negligently and gave dash to him after coming to wrong side. As a result of which, he sustained grievous injuries in the nature of fracture to his hand and legs. The said vehicle was being driven by one Jagindra Kulwantsingh Chanriya. He has been prosecuted by police. The claimant was admitted to hospital and has taken treatment at various hospitals,

incurred medical expenses around Rs.5,00,000/-, underwent surgeries, yet his injuries have turned into permanent physical disability for him, and therefore, he had claimed compensation of Rs.30,00,000/-. The said compensation has been claimed from respondent No.1 - the owner of the truck and the Insurance Company with whom the truck was insured on the date of the accident.

3. Respondents No.1 and 2 resisted the claim of the claimant by filing written statement. They both have denied the fact of accident, so also the manner in which it had occurred as narrated in the claim. They have also denied the age, occupation and income of the claimant. The Insurance Company in addition has taken statutory defence that, the truck driver was not holding valid and effective driving licence on the date of the accident and thereby there is breach of terms of policy.

4. After the evidence was led by claimant alone, the learned Tribunal has held that, claimant has proved that, he has sustained permanent physical disability in the accident and the said accident was caused by the driver of the tuck. It was held that, fitness certificate of the truck was not produced, and therefore, the truck was being driven on that day without fitness certificate, hence it amounts to breach of terms of policy. Compensation of

Rs.20,48,615/- has been awarded, however the Insurance Company has been directed to pay the compensation to claimant first and then to recover it from respondent No.1. As aforesaid the appeal has been filed challenging the limited part of the order only.

5. Heard learned advocate Mr. A. B. Kadethankar for appellant and learned advocate Mr. S. D. Tawshikar for respondent No.1. Learned advocate for respondent No.2 was absent when the matter was taken up for final hearing.

6. Taking into consideration the limited scope of the appeal, following point arise for my determination. Finding and reason for the same are as follows ;

(A) Whether the Tribunal was justified in passing the order of pay and recover against the Insurance Company ?

7. It appears that, statutory defences were taken by the Insurance Company stating that the driver was not holding valid and effective driving licence on the date of the accident. So also the vehicle was run without fitness certificate. As regards fact that has been arrived at or finding that has been given by the learned Tribunal that, the vehicle was being run without fitness certificate on the date of the accident; original respondent No.1 - owner has not filed any appeal. Therefore, it is required to be seen whether in absence of the said fitness certificate, it can be stated that it was a

fundamental breach requiring exoneration of the Insurance Company from the liability to pay amount of compensation. It will not be out of place in addition to mention here that, the respondent No.1 had not examined himself nor produced any document, however the respondent No.2 had issued witness summons to RTO Office, Shrirampur, accordingly several documents were produced at Exhibits 61 to 63. From those documents it was pointed out that, there was no fitness certificate to the said truck on the date of the accident. The question that arises is as to how this fact would have been known to the claimant. The Insurance policy was a contract between respondents No.1 and 2 and definitely the claimant would not have had any idea that the said vehicle is being driven or brought on road without fitness certificate. Therefore, it cannot be taken as fundamental breach of terms of policy requiring exoneration of the Insurance Company to indemnify the claimant.

8. Further the above said point has been dealt with in, *S. Iyyapan Vs. United India Insurance Company Ltd. and Another*, reported in *AIR 2013 (SC) 2262*. Further similar view was also taken by this Court in *Bajaj Allianz General Insurance Company Limited Versus Deoram s/o Shivram Jadhav*, reported in *2018 (2) Mh.L.J. 101*. In this case also the owner was not having valid and effective permit to ply offending vehicle within the territorial jurisdiction of State of Maharashtra and the order of pay and recover

was passed. Permit and fitness of the vehicle required to be considered on the same platform. Under such circumstance, no fault can be found in the order passed by the learned Tribunal regarding pay and recover against the Insurance Company. Point is answered accordingly. There is no merit in the present appeal, it is dismissed with costs. Award be drawn up accordingly.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.