IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.977 OF 2014

Shashikant s/o. Rachappa Kalge
Age: 42 years, Occu: Business,
R/o. Budhwar-Peth, Basvakalyan,
Tq. Basvakalyan, Dist. Bidar
(Karnataka)

... APPELLANT

VERSUS

1. Reshma w/o. Yusuf Sayyed
Age: 34 years, Occu: Household.

2. Jahira d/o. Yusuf Sayyed
Age:17 years, Occu: Education.

3. Sumayya d/o. Yusuf Sayyed
Age: 16 years, Occu: Education.

4. Asif s/o. Yusuf Sayyed
Age: 14 years, Occu: Education

5. Namira d/o. Yusuf Sayyed
Age: 12 years, Occu: Education.

6. Sania d/o. Yusuf Sayyed
Age: 10 years, Occu: Education.
The Resp. No.2 to 6 are minors
Through G.A.L. No.1.

7. Saherabee w/o Mainoddin Sayyed
Age:62 years, Occu: Nil,
All R/o. Haregaon, Tq. Ausa,
Dist. Latur.

8. Kantappa Sambanna
(dismissed as per Court's
order dated 23.06.2017)

9. The Oriental Insurance Co. Ltd.
Through its Branch Manager,
Opp. To S.T. Stand, Latur,
Dist. Latur.
(Notice to be served on
Branch Manager)

… RESPONDENTS

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Mr. V.S. Bedre, Advocate for appellant.
Mr. B.R. Warmaa, Advocate for Respondent Nos.1 to 7.
Mr. A.G. Kanade, Advocate for Respondent No.9.

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 14th August, 2019**

**Date of pronouncing
the judgment : 4th October, 2019.**

JUDGMENT:

. Present appeal has been filed by the original opponent No.1 challenging the judgment and award passed by the learned Chairman Motor Accident Claims Tribunal, Latur in M.A.C.P. No.142 of 2007 dated 21.10.2008 for exonerating original respondent No.3 the insurance company from liability to pay compensation.

2. The facts giving rise to the present appeal are that present respondent Nos.1 to 7 are the original claimants who had filed the said petition under Section 166 of the Motor Vehicles Act, 1988 for getting compensation on account of accidental death of one Yusuf Mainoddin Sayyed. Said Yusuf Mainoddin expired due to accidental injuries which were caused on 14.04.2007 at Khopoli on Bombay-Pune Highway. He was travelling in the truck as Coolie, when the truck reached near Borghat. It was driven by respondent No.2 in rash and negligent manner. He lost his control over the truck and the truck went down in the valley. Yusuf died on the spot. The said vehicle was owned by respondent No.1 and it was insured with respondent No.3 on the date of the accident. The claimants had claimed compensation of Rs.19,20,000/-. However, restricted the same to Rs.5,00,000/-.

3. The claim proceeded ex-parte against respondent No.2. Respondent Nos.1 and 3 had filed their separate written statement. Both the respondents denied the fact of accident, the manner in which the accident had taken place, age, occupation and income of the deceased as pleaded in the petition. The insurance company, in addition, had taken statutory defence that the respondent No.2 was not holding valid and

effective driving licence to drive the said vehicle on the date of the accident and therefore, it amounted to breach of terms of policy. The insurance company sought exoneration.

4. Evidence was laid by the claimants in the form of oral as well as documentary, whereas respondents did not lay either oral or documentary evidence, but then relied on the documentary evidence that was produced by the claimants themselves. After considering the evidence on record, the learned Chairman had come to the conclusion that the driving licence Exhibit-34 on record does not show that respondent No.2 had driving licence to drive truck. The said driving licence was in respect of light motor vehicle. He was admittedly driving heavy goods vehicle and therefore, it was held that there is breach of terms of policy. Insurance Company was exonerated. Taking into consideration the evidence adduced by the claimants, compensation of Rs.3,94,000/- was awarded together with interest at the rate of Rs.7.5% per annum till actual realization of entire amount. Respondent No.1 has filed this appeal challenging the exoneration of the insurance company.

5. Heard learned Advocate Mr. V.S. Bedre for appellant, learned Advocate Mr. B.R. Warma for respondent Nos.1 to 7 i.e. original claimants

and learned Advocate Mr. A.G. Kanade for respondent No.9-insurance company.

6. It will not be out of place to mention here that earlier, this matter was heard by this Court and by order dated 02.08.2017, the original driving licence and driving licence certificate produced by the appellant before this Court was sent to the tribunal for recording evidence and giving finding to the said issue. Accordingly, the evidence was laid before the concerned tribunal and by judgment dated 29.09.2017, the tribunal has held that respondent No.2 had valid and effective driving licence to drive heavy goods vehicle on the date of the accident and the said finding has been transmitted to this Court.

7. Taking into consideration the licence that was produced on record of this Court and then evidence was laid before the tribunal, it is very much clear that respondent No.2 was authorized to drive heavy transport vehicle as well as heavy passenger vehicle and the duration of his licence was from 02.09.2004 to 01.09.2007. The accident in this case had taken place on 14.04.2007. It appears that the insurance company who had taken the said defence about breach of terms of policy did not lead any evidence to disprove the evidence laid by present appellant and therefore,

there is no hurdle in confirming the finding given by the learned tribunal.

8. It will not be out of place to mention here that none of the other respondents have challenged the judgment and award passed by the learned Chairman on other counts. Under such circumstance, the appeal deserves to be allowed and the finding given for exonerating the insurance company deserves to be set aside. Hence, following order :

ORDER

I) The appeal is hereby allowed.

II) The judgment and award passed by learned Chairman, Motor Accident Claims Tribunal, Latur in M.A.C.P. No.142 of 2007 dated 21.10.2008 is hereby set aside to the extent of dismissing the claim as against respondent No.3 the insurance company. The said claim stands allowed against respondent No.3 also. Respondent No.3 should pay the amount of compensation together with respondent Nos.1 and 2 jointly and severally within a period of two months.

III) It appears that some part of the amount which was deposited by the appellants in this Court has been withdrawn by the original claimants and in view of the order passed on 27.10.2014 by this Court in Civil Application No.10248 of 2014, the said amount so withdrawn is required to be adjusted towards compensation payable to them under the award.

IV) Accordingly, the entire amount as per the award that will be deposited by the insurance company would be allowed to be withdrawn by the original claimants as per the award passed by the tribunal except to the extent of Rs.25,000/- which was allowed to be withdrawn by the claimants. The said amount of Rs.25,000/- be given to appellant.

V) No order as to costs.

(SMT. VIBHA KANKANWADI, J.)

SCM