

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

First Appeal No. 0469 of 2013

District : Jalgaon

New India Assurance Company Ltd.,
Aurangabad,
Through its Divisional Manager,
Adalat Road, Aurangabad.

.. Appellant
(Original
respondent
no.02)

versus

1. Rohini wd/o. Rajendra Kasar,
Age : 43 years,
Occupation : Household.

2. ~~Abhijit s/o. Rajendra Kasar,~~
~~Age : 21 years,~~
~~Occupation : Education.~~

.. Respondent
no.02 deleted.

3. Tanmay s/o. Rajendra Kasar,
Age : 12 years,
Occupation : Education,
Minor U/g. of Respondent No.1.

.. Respondents
(Nos.01 to 03 -
Original
claimants
&
No.04 -
Original
respondent
no.01)

All R/o. Plot No.25/2,
Kisanrao Patil Nagar,
Near Ramanand Nagar,
Jalgaon.

4. Menlin Transport Pvt. Ltd.,
Plot No. 107, Sector 20,
Turbhe, Navi Mumbai,
Thane.

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Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

*Mr. M.M. Bhokarikar, Advocate, for respondents
no.01 and 03.*

*Respondent no.02 deleted as per Court's order
dated 25-06-2019.*

*Respondent no.04 served through paper publication
(Absent).*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 31ST JULY 2019

ORDER :

01. Present appeal has been filed by the original respondent no.02 - Insurance Company, challenging the judgment and award passed in Motor Accident Claim Petition No. 426 of 2006 by learned Member of the Motor Accident Claims Tribunal, Jalgaon, dated 15-10-2011, thereby holding the Insurance Company liable to pay compensation to the original claimants jointly and severally along with the original respondent no.01 - owner.

02. It will not be out of place to mention here, that in this appeal, only the liability has been much canvassed though other points were also raised in appeal memo. As regards quantum is concerned, there is no contrary evidence adduced by the Insurance Company to challenge the same, so also, as regards negligence point, no contrary evidence has been adduced. Learned Advocate appearing for the appellant submitted that the appeal is restricted to holding the Insurance Company liable to pay compensation together with respondent no.01. It has been for the first time at the appellate stage tried

to be contended that the driving license which was produced on record of one Mahandar Singh, who was driving the offending vehicle owned by respondent no.01, is stated to be fake.

03. By filing Civil Application No.9253 of 2013 under Order XLI Rule 27 of the Code of Civil Procedure, 1908, the Insurance Company intended to adduce evidence on the point that the said driving license is fake. By order dated 31st July 2019, this Court has rejected that application. At the cost of repetition, it can be said that at the time of written statement, no plea was taken by the Insurance Company, that the said driving license is fake though an authenticated copy of the same was on record. But thereafter it appears that all of a sudden, learned Advocate representing the Insurance Company before the trial Court became suspicious and then the enquiry has been made. It is stated that the said enquiry has been made after pronouncement of the judgment and award by the learned trial Court. If such type of evidence is allowed to be adduced, then it would be a mockery of justice.

04. In this appeal, we are required to consider the documents which were before the learned Tribunal. It was not in dispute, that the vehicle involved in the accident was owned by respondent no.01 and it was insured with respondent no.02 on the date of

accident. No evidence was adduced before the Tribunal by the Insurance Company to prove breach of terms of policy. Under such circumstance, the learned Tribunal was justified in holding the Insurance Company liable to pay the compensation to the claimants jointly and severally with respondent no.01 in view of Section 147 read with Section 149 of the Motor Vehicles Act, 1988.

05. Since there is no illegality or error committed by the learned Tribunal in passing the award, no interference is required in the same in this appeal. Hence, the appeal is hereby dismissed.

(Smt. Vibha Kankanwadi)
JUDGE

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