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

First Appeal No. 374 of 2014

District : Hingoli

United India Insurance Company Ltd., Through its Divisional Manager, Osmanpura, Aurangabad. .. Appellant (Original respondent no.02)

versus

1. Bhaurao s/o. Pralhad Zate, Age : 28 years, Occupation : Labour, R/o. Gangalwadi, Taluka Aundha, District Hingoli.
2. Shyam s/o. Marotrao Gaikwad, Age : Major, Occupation : Business, R/o. Khandala, Taluka & District Hingoli.

.. Respondents (No.01 - Original claimant & No.02 - Original respondent no.02)

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

Mr. N.S. Tekale, Advocate, for respondent no.01.

Respondent no.02 served (Absent).

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With

First Appeal No. 376 of 2014

District : Hingoli

United India Insurance Company Ltd., .. Appellant (Original

Through its Divisional Manager,
Osmanpura, Aurangabad. respondent no.02)

versus

1. Hanwata s/o. Maroti Daware,,
   Age : 40 years,
   Occupation : Service,
   R/o. Chinchurdi,
   Taluka Kalamnuri, District Hingoli. .. Respondents (No.01 - Original claimant & No.02 - Original respondent no.02)

2. Shyam s/o. Marotrao Gaikwad,
   Age : Major,
   Occupation : Business,
   R/o. Khandala,
   Taluka & District Hingoli.

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

Mr. N.S. Tekale, Advocate, for respondent no.01.

Respondent no.02 served (Absent).

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With

First Appeal No. 878 of 2015

District : Hingoli

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad. .. Appellant (Original respondent no.02)

versus

1. Pandit s/o. Narayan Pandhare,
   Age : 30 years,
   Occupation : Service,
   R/o. Gadadgavanwadi,
   Taluka & District Hingoli. .. Respondents (No.01 - Original claimant &

2. Shyam s/o. Marotrao Gaikwad,
Age : Major,
Occupation : Business,
R/o. Khandala,
Taluka & District Hingoli. — No.02 - Original respondent no.02)

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

Respondent no.01 died.

Mr. P.S. Agrawal, Advocate, for respondent no.02.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19TH AUGUST 2019

JUDGMENT :

01. All these appeals are arising out of same accident and holding the appellant liable to pay compensation in all the matters. Hence, they are proposed to be disposed of by this common judgment.

02. In F.A. No. 374 of 2014, the judgment and award passed in M.A.C.P. No.140 of 2008 by learned Member of Motor Accident Claims Tribunal, Hingoli,dated 01-06-2013 is under challenge; whereas in F.A. No. 376 of 2014, judgment and award passed in M.A.C.P. No.169 of 2008 dated 01-06-2013 and in F.A. No.878 of 2015, judgment and award passed in M.A.C.P. No. 135 of 2008 dated 16-01-2013 are under challenge.

03. In all these appeals, the common point of

challenge that has been raised is that the driver of the offending jeep was not holding proper category of driving license. In fact, photo-copy of the driving license of the driver was exhibited and admitted in evidence. It showed that endorsement in respect of transport category was obtained for the first time from 17-11-2007 to 16-11-2012. The accident had taken place on 15-11-2007 and therefore, the said entry was not available on that day. Hence, he was not holding the driving license of proper category of the vehicle i.e. transport vehicle as the said jeep was registered as 'Taxi'. The Tribunal has not taken the said ground as breach of terms of policy and therefore, has not passed the order of pay and recover. These submissions have been made by the learned Advocate appearing for the appellant in all these appeals. So also, it was submitted on his behalf, that the claimant in F.A. No. 878 of 2015 ought to have been held contributory liable to the accident.

04. Per contra, learned Advocates appearing for the respondents supported reasons given by the Tribunal and supported those awards.

05. Taking into consideration the scope of the appeals on the basis of the points raised during the course of arguments, it is not necessary to discuss

the quantum that has been awarded. So also, it is absolutely not necessary to go into the aspect that the respective claimants had proved that they met with accident on 15-11-2007 in which jeep bearing no. MH-22/4052 was involved. They have sustained either injuries or permanent disability entitling them to get compensation. Now, as regards the claimant in F.A. No. 878 of 2015 (M.A.C.P. No. 135 of 2008), it is to be noted that there was no evidence adduced by the Insurance Company to show contributory negligence on the part of the said claimant. In absence of any such specific defence as well as evidence; merely on the basis of the police papers, we cannot hold him contributorily liable for the accident. Original respondent no.01 in all the matters was the owner as well as driver of the offending vehicle. He has not even contested the matter and it was brought on record that he has been prosecuted by police. Evidence was adduced by all the claimants regarding the manner in which the accident took place and it was thus supported by the police papers. Under such circumstance, the learned Tribunal was justified in invoking the adverse inference against the original respondent no.01.

06. Now, turning towards the point regarding driving license, perusal of Exhibit 21, which is the driving license of original respondent no.01, would

show that it was issued to him on 11-10-1983. There are entries in tabular form overleaf and the right hand side tabular form says that he was authorized to drive transport vehicle with effect from 02-11-1998 and even the batch number was given. The left side endorsement says that the license to drive transport vehicle was valid from 17-11-2007 to 16-11-2012. Any other evidence has not been adduced by the Insurance Company to prove that in between 02-11-1998 to 17-11-2007, respondent no.01 was disqualified from holding driving license of transport category. Under such circumstance, when there was no positive evidence to support the plea taken by the Insurance Company, that there is breach of terms of policy, the learned Tribunal was justified in holding the Insurance Company liable to pay compensation jointly and severally with the driver and owner of the offending vehicle. Under such circumstance, there is no error or illegality committed by the Tribunal. Hence, there is no merit in the first appeals.

07. In the result, the first appeals are dismissed. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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