IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1218 OF 2015

Rajeshwari Ramkumar Nadar .. Appellant

vs.

Laxman Mahadev Bamburde .. Respondent

Mr.T.J.Mendon for the appellant

CORAM : K. K. TATED, J
DATE : SEPTEMBER 5, 2019

P.C.:

. Heard.

2 By this First Appeal, appellant original Claimant is challenging the judgment and award dated 30.10.2014 passed by MACT, Mumbai in Claim Application No.1498 of 2007 awarding sum of Rs.7,89,000/- by way of compensation with interest @ 7.5% p.a. against Respondent no.1 only and exonerating Insurance Company from payment of compensation.

3 The learned counsel for the Applicant submits that in an accident which occurred on 12.9.2006 Ramkumar Ponupandiyan Nadar sustained injuries and thereafter, he died. Hence, the

Applicant filed Claim Application under section 166 of the Motor Vehicles Act for compensation on the ground that deceased was earning Rs.5250/- per month by way of salary and he was 37 years old at the time of accident. The Tribunal after considering the evidence on record held that Claimants are entitled compensation from the owner of the offending vehicle and not from Insurance Company on the ground that Driver was not holding valid licence on the date of accident.

4 The learned counsel for the appellant submits that Tribunal erred in coming to the conclusion that Insurance Company is not liable to pay compensation on technical ground that the offending vehicle's driver was not holding valid licence. He submits that Insurance Company failed to produce on record any documentary evidence to show that the driver of the offending vehicle was not holding valid licence. He submits that entire burden was on Insurance Company to prove the same. Though Insurance Company failed to produce any evidence, Tribunal erred in coming to the conclusion that the Insurance Company proved that the driver of the offending vehicle was not holding valid licence and rejected the claim against them. In support of this contention, he relies on unreported judgment of this court in the matter of ***New India Assurance Co.Ltd. vs. Arvind P. Kulkarni & Ors. in First Appeal No.100 of 1999*** (High Court Appellate Side) dated 7.9.2018 (Coram : A.S.Oka, J.) He submits that in this judgment, our court has held that the burden always goes on Insurance Company to prove that the driver of the offending vehicle was not holding valid licence at the relevant time. He submits that Tribunal cannot rely only on the

fact that the police has registered the case against the driver of the offending vehicle to that effect. In view of these facts and the law declared by our High Court in the matter of ***New India Assurance Co.Ltd. vs. Arvind P. Kulkarni & Ors. in First Appeal No.100 of 1999,*** he submits that the judgment and award passed by the Tribunal is required to be set aside holding that Insurance Company is liable to pay compensation. He submits that if appeal is not allowed, irreparable loss will be caused to the Claimants.

5 Heard the learned counsel for the appellant at length.

6 On the basis of the submissions made by the learned counsel for the appellant, the issue involved is "whether the Tribunal erred in coming to the conclusion that the Insurance Company is not liable to pay compensation to the appellant?"

7 It is to be noted that in the present proceeding on the basis of evidence on record, Tribunal framed following issues for consideration :

	ISSUES	**FINDINGS**
1.	Whether the Applicant proves that Late Mr.Ramkumar P. Nadar died in a motor vehicle accident due to the rash and negligent driving by the driver of motor cycle bearing No.MH-43-Q-2105?	In the affirmative
2.	Whether the insurer proves that the application is bad for non joinder of necessary party i.e. driver of	In the Negative

	offending motor cycle No.MH-43-Q-2105?	
3.	Whether the insurer proves that the driver of motor car No.MH-43-Q-2105 was not holding valid driving license?	In the affirmative.
4.	Whether the applicants are entitled for compensation? If yes, what amount and from whom?	In the affirmative. As per final order.
5.	What Order and Award?	Application is partly allowed.

8 Issue no.3 is very clear about valid licence of the driver of Motor Car MH 43 V 2105. To prove the issue no.3, Insurance Company examined its Senior Executive (Legal), Mr.Irfan Shaikh Mustafa at Exhibit No.37. He has produced on record documentary evidence at Exhibit Nos.38 to 40 i.e. certified copy of policy of the offending vehicle, copies of notices and postal receipts issued to the owner of the offending vehicle. The Insurance Company by notice called upon the owner of the offending vehicle to produce copy of driving license if any, issued in his favour by Road Transport Officer as per Motor Vehicle Act.

9 In the present case, Ujwal Laxman Bamburde was the rider of the motor cycle in question. He was not holding any valid or effective licence to drive the motor cycle. The Motor cycle was belonging to the father of the Ujwal. Motor Cycle owner i.e. Respondent no.1 illegally allowed his son to drive the motor

cycle. Though Respondent no.1 called upon to produce the driving licence if any held by his son, Ujwal Laxman Bamburde, he failed and neglected to produce the same. Therefore, the Tribunal held that on the date of accident, the driver of the motor cycle was not holding valid licence and answered issue no.3 in the affirmative.

10. The authority cited by the appellant in the matter of ***Kashiram Yadav and Another vs. Oriental Fire and General Insurance Co. and Others***[1] and ***New India Assurance Co.Ltd. vs. Arvind P. Kulkarni & Ors.*** (Supra) is not applicable in the facts and circumstances of the present case. In that authority, the Tribunal only relied on Criminal Case filed by the police against the driver of the vehicle for driving vehicle, without valid licence, but that is not the case in hand. In the case in hand, Insurance Company specifically called upon the Respondent no.1 owner of the offending vehicle to produce documentary evidence to show that whether rider of motor cycle in question was holding valid licence. He failed and neglected to do so. In this way, Insurance Company discharged their burden to prove that on the date of accident, driver of the offending vehicle was not holding valid licence.

11 The Apex Court in the matter of ***Kashiram Yadav and Another vs. Oriental Fire and General Insurance Co. and Others*** (Supra) specifically held that if driver of the offending vehicle is not holding valid licence at the time of accident, in that case, Insurance Company is not liable to pay any compensation.

1 (1989) 4 SCC 128

Therefore, the issue by this court is answered in the affirmative.

12 Hence, First Appeal is dismissed.

13 No order as to costs.

(K.K.TATED, J.)