

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO. 704 OF 2014

with

FIRST APPEAL NO. 643 OF 2015

with

FIRST APPEAL NO. 644 OF 2015

with

FIRST APPEAL NO. 696 OF 2014

with

FIRST APPEAL NO. 1351 OF 2013

with

FIRST APPEAL NO. 1352 OF 2013

with

FIRST APPEAL NO. 1357 OF 2013

with

FIRST APPEAL NO. 1358 OF 2013

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FIRST APPEAL NO. 704 OF 2014

M/s. Dhanlaxmi Borewell,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Ayaz Ahamad s/o Siraj Ahmad,
aged about 44 years, Occ. - Driver,
R/o Kolsatal Padav Well,
Near Gaikwad, Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.

2. Rukhsanabano w/o Ayaz Ahamad,
aged about 42 years, Occ. – Household,
r/o Kolsatal Padav Well, Near
Gaikwad, Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.
3. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate
for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the
respondent Nos. 1 and 2.

Shri A.J. Pophali, Advocate for the respondent No. 3.

FIRST APPEAL NO. 643 OF 2015

M/s. Dhanlaxmi Borewell,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Ayaz Ahamad s/o Siraj Ahamad,
aged about 45 years, Occ. - Driver,
r/o Kolsatal Padav Well,
Near Gaikwad Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.

2. Rukhsanabano w/o Ayaz Ahamad,
aged about 42 years, Occ. – Household,
r/o Kolsatal Padav Well,
Near Gaikwad, Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.
3. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate
for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the
respondent Nos. 1 and 2.

Shri A.J. Pophali, Advocate for the respondent No. 3.

FIRST APPEAL NO. 644 OF 2015

M/s. Dhanlaxmi Borewell,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Smt. Jubedabegum wd/o Abdul Wahid
aged about 51 years, Occ. - Household,
r/o Juni Badnera,
Tah. Badnera, District - Amrawati
2. Abdul Afiz s/o Abdul Wahid
aged about 33 years, Occ. – Labour,
r/o Juni Badnera,
Tah. Badnera, District - Amrawati

3. Shabana Parveen d/o Abdul Wahid
aged about 31 years, Occ. – Household,
r/o Juni Badnera,
Tah. Badnera, District - Amrawati
4. Rizwana Parveen d/o Abdul Wahid
aged about 26 years, Occ. - student,
r/o Juni Badnera,
Tah. Badnera, District – Amrawati
5. Rubina Parveen d/o Abdul Wahid
aged about 24 years, Occ. – student,
r/o Juni Badnera,
Tah. Badnera, District – Amrawati
6. Abdul Majid S/o Sk. Chiman
(deleted as per Registrar's
order dt. 11/04/2017)
7. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the respondent Nos. 1 to 5.

Shri A.J. Pophali, Advocate for the respondent No. 7.

FIRST APPEAL NO. 696 OF 2014

M/s. Dhanlaxmi Borewell,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Sarfaroj Ahamad S/o Siraj Ahamad
aged about 34 years, Occ. - Labour,
R/o Kolsatal Padav Well,
Near Gaikwad Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.
2. Saina Parvin w/o Sarfaroj Ahamad
aged about 33 years, Occ. – Household,
R/o Kolsatal Padav Well,
Near Gaikwad Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.
3. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate
for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the
respondent Nos. 1 and 2.

Shri A.J. Pophali, Advocate for the respondent No. 3.

FIRST APPEAL NO. 1351 OF 2013

M/s. Dhanlaxmi Borewell Corporation,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Aasif Khan S/o Rashid Khan
aged about 37 years, Occ. - Nil,
R/o Islampura, Kamptee,
District – Nagpur.

2. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the respondent Nos. 1.

Shri A.J. Pophali, Advocate for the respondent No. 2.

FIRST APPEAL NO. 1352 OF 2013

M/s. Dhanlaxmi Borewell Corporation,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Miraz Ahamad s/o Ayaz Ahamad
aged about 22 years, Occ. - student,
R/o Kolsa Tal Padav Well,
Near Gaikwad Pante's House,
Kamptee, Tahsil – Kamptee,
District – Nagpur.

2. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the respondent Nos. 1.

Shri A.J. Pophali, Advocate for the respondent No. 2.

FIRST APPEAL NO. 1357 OF 2013

M/s. Dhanlaxmi Borewell Corporation,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Sherkhan s/o Abbaskhan Pathan
aged about 55 years, Occ. - service,
R/o Qurt No. C-129, Type-2,
PN.T. Colony, Katol Road,
Nagpur
2. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate
for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the
respondent Nos. 1.

Shri A.J. Pophali, Advocate for the respondent No. 2.

FIRST APPEAL NO. 1358 OF 2013

M/s. Dhanlaxmi Borewell Corporation,
42, Kadbi Chowk, Nagpur
through Proprietor
Shri Sarabjeet Singh Kalsi.

... APPELLANT

Versus

1. Mohd. Idihajaj s/o Haji Ali
aged about 39 years, Occ. - auto owner,
R/o Naya Godam, G.N. Road,
Kamptee, District - Nagpur

2. The Divisional Manager,
New India Assurance Co. Ltd.
5th Floor, Shriram Shyam Tower,
Kingsway, Sadar, Nagpur.

... RESPONDENTS

Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, Advocate for the appellant.

Shri P.S. Mirache and Ms. M.H. Pathade, Advocate for the respondent No. 1.

Shri A.J. Pophali, Advocate for the respondent No. 2.

CORAM : PUSHPA V. GANEDIWALA, J.

DATED : NOVEMBER 18, 2019.

ORAL JUDGMENT :

Heard Shri Nilesh D. Wakhore, Advocate h/f Shri P.A. Abhyankar, learned counsel for the appellant, Shri P.S. Mirache with Ms. M.H. Pathade, learned counsel for the respondent Nos. 1 & 2 and Shri A.J. Pophali, learned counsel for the respondent No. 3.

2. All the aforesaid appeals arose out of the same cause of action and the issues involved in these appeals are common, therefore, these Appeals are heard together and are being decided by this common judgment.

3. First Appeal No. 704 of 2014 is taken as a lead appeal. The appellant M/s. Dhanlaxmi Borewell in all these appeals is the owner of the Truck No. MH-31-AG-1020, having drilling machine mounted on it. This vehicle dashed auto rickshaw in which respondents / claimants were travelling. In this vehicular accident four persons were dead and many were injured. Either victims or their legal heirs filed Claim Petitions before the Motor Accident Claims Tribunal, Nagpur. The learned Tribunal awarded compensation and fixed the liability against the owner of the vehicle i.e. Truck No. MH-31-AG-1020, exonerating the Insurance company on the ground of breach of terms of the insurance policy and the owner failed to prove that the driver was holding a valid and effective license on the day of incident. The following point arise for determination of this Court in all these appeals.

“Whether the respondent – Insurance company proved that owner was negligent in handing over vehicle to the person who was not holding a valid and effective driving license ?

4. Learned Counsel on behalf of the appellant relied on the judgment of the Hon'ble Apex Court in the case of **Skandia Insurance Co. Ltd. Vrs. Kokilaben Chandravadan and others** reported in **(1987) 2 SCC 654**, in order to show that it was not in the knowledge of the appellant / owner of the offending truck that at the relevant time, the truck was being driven by the driver Senthilkumar and, therefore, the owner cannot be held responsible to pay the compensation to the victims of the accident.

5. On the other hand, learned Counsel on behalf of the respondent – New India Assurance Company Limited supported the impugned judgment and award dated 18.05.2013 of the Motor Accident Claims Tribunal, Nagpur. Learned Counsel also relied on the following judgments in support of his argument :

(i) National Insurance Co. Ltd. Vrs. Swaran Singh and others reported in (2004) 3 SCC 297.

(ii) Sardari and others Vrs. Sushil Kumar and others reported in 2008 AIR SCW 2075.

(iii) Manager, United India Insurance Co. Ltd., Nagpur Vrs. Kamalabai Mukunda Kumare and others passed by this Court decided on 29th March 2010.

6. At the outset, none of parties challenged the finding of the Tribunal as regards the quantum of compensation. The Insurance policy (Exh. 34) with respondent No. 3 is also not disputed. It is the case of the appellant – owner that he authorized driving of the offending vehicle to his employee by name Ravi Rajapathi, however, without his knowledge and without his permission, the Cleaner of the offending vehicle – Senthilkumar, who was also in the employment of the appellant – owner, drove the vehicle. Interestingly, the appellant – owner neither produced driving license of Ravi Rajapathi nor examined him before the Tribunal. Admittedly, the appellant – owner who examined himself before the Tribunal, was not the eye-witness to the incident. If the appellant - owner is claiming

his ignorance about the driving of the vehicle at the relevant time by the unauthorized person, it was incumbent on the owner to at least show that the authorized driver was having valid and effective license at the relevant time. The appellant – owner has based his case only on the basis of police case paper (Exh. 22), which shows that the Cleaner – Senthilkumar has been made accused and not the owner, under Section 5 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act).

7. On careful reading of Section 5 of the Act, it fixes responsibility on owners of motor vehicle, if they permit any person who does not satisfy the provisions of Section 3 or Section 4 to drive the vehicle. The appellant – owner took a stand before the Pachpaoli Police Station, Nagpur in Crime No. 218 of 2009 relating to the present accident that he authorized Ravi Rajapathi to drive his vehicle and not Senthilkumar and, therefore, the police relying on his statement and the statement of the Driver – Ravi Rajapathi, did not initiate any action against the appellant/ owner. However, that does not mean that the owner has to be exonerated from his liability to the

claimants which arose out of the vehicular accident caused by offending vehicle of the owner and the owner has breached the essential condition of the policy. Had it been the case that Ravi Rajapathi was holding a valid and effective license and the same were brought on record, he would have been exonerated for want of knowledge. In the instant case, he is claiming innocence about the driving of his vehicle at the relevant time by the unauthorized driver i.e. Senthilkumar, who was in his employment and working as a Cleaner of the said vehicle. However, at the same time, he failed to prove even the driving license of his authorized driver Ravi Rajapathi and also did not examine his driver Ravi Rajapathi, though he was in his employment and very much available, as rightly observed by the learned Tribunal.

8. The learned counsel for the claimants expressed the difficulty on behalf of the claimants that though the learned Tribunal enhanced the compensation in favour of the claimants and the judgment and award was passed in the year 2013, the claimants could not recover the same as the liability has been

fastened completely on the owner of the offending vehicle by exonerating the Insurance Company fully.

9. A perusal of the impugned judgment and Award would reflect that at the relevant time, the issue as regards pay and recovers principle was pending for decision before the Larger Bench. Now the law is well settled by the catena of judgments of the Hon'ble Apex Court including the case of **National Insurance Company Limited vs. Swaran Singh & Ors.**, reported in **(2004) 3 SCC 297**, wherein the Hon'ble Apex Court in paragraph No. 76 of the said judgment took a view that the insurance companies are entitled to raise a defence but despite the fact that its defence has been accepted having regard to the facts and circumstances of the case, the Tribunal has power to direct them to satisfy the decree at the first instance and then direct recovery of the same from the owner.

10. The Motor Accident Claims Act being a beneficial legislation, the injured victims of the accident or legal representatives of the deceased in the accident are required to

be brought to the position as they were prior to the accident and awarding 'just compensation' is *sine qua non* in such claims. If the principle of 'pay and recover' is not followed, the very purpose of the Act would get frustrated. In the instant accident, there are four dead persons and many injured. They were travelling in the Auto Rickshaw to which the offending truck gave a violent dash due to rash and negligence driving by the driver. The findings of the Tribunal as regards rash and negligent driving by the Driver of the offending vehicle has reached finality. The sole question with regard to the fixing of liability is before this Court.

11. For the reasons aforesaid, in the absence of any material evidence from the side of the owner of the truck as regards driving license of his authorized driver Ravi Rajapathi, the stand of the Insurance Company needs to be accepted. In my firm view, Insurance Company – Respondent No. 3 could prove that both the Drivers i.e. Ravi Rajapathi and Senthilkumar were not having valid and effective driving licenses to drive the offending vehicle.

12. In order to get immediate relief to the claimants and as per the law settled by the judgment of the Hon'ble Apex Court in the case of *National Insurance Company Limited vs. Swaran Singh & Ors.*, (supra), the Insurance Company – Respondent No. 3 is at first instance would be liable to pay to the claimants and the Insurance Company would be entitled to recover the same from the owner of the vehicle.

13. In this view of the matter, Appeals are partly allowed and the judgment of the learned Tribunal is modified to the extent that Respondent No. 3 – Insurance Company to pay compensation to the claimants as per the Award of the Tribunal with interest as directed and the same amount shall be recovered by Respondent No. 3 - Insurance Company from the owner of the vehicle.

14. First Appeals are disposed of accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

JUDGE