IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3458 OF 2019
WITH
CIVIL APPLICATION NO. 1364 OF 2011

The New India Assurance Co. Ltd. .. Appellant [original R-2]

Versus

Smt. Sumanbai w/o. Subhash Jadhav & Ors. .. Respondents [R-1to5 - ori.claimants R-6-ori.R-1]

Mr.A.B. Kadethankar, Advocate for the appellant.
Mr.P.C. Mayure, Advocate for respondent No.6.

CORAM : S.M.GAVHANE,J.
DATED : 20.02.2020

P.C. :-

. The appellant/insurance company has filed this appeal aggrieved by the judgment and award dated 01.01.2010 passed by the Motor Accident Claims Tribunal, Jalna in MACP No.67 of 2008 filed by respondent Nos. 1 to 5/original claimants against respondent No.6 – owner of the vehicle and the appellant/insurance company, directing the appellant to deposit compensation of Rs.3,21,500/- with interest and then to recover the said amount from opponent No.1/present respondent No.6 – owner of the vehicle. Hereinafter in this order the parties are being referred to by their position in the petition before the Tribunal.

2. The facts giving rise to this appeal in short are that respondent Nos.1 to 5, original claimants had filed aforesaid petition in the Motor Accident Claims Tribunal, Jalna against opponent No.1-owner and opponent No.2 – insurance company for compensation of Rs.5 lakhs on account of accidental death of Subhash Jadhav – husband of applicant No.1 and father of applicant Nos.2 to 5 alleging that truck owned by opponent No.1 bearing Registration No. MH-43-U-1627 was rashly and negligently driven by its driver Sanjay Rambhau Kamble on 03.03.2008 and it had dashed deceased while he was proceeding by way towards village Bharosa.

3. The claim petition proceeded ex-parte against opponent No.1 – owner.

4. Opponent No.2/appellant – insurance company by filing written statement at Exh.14 on admitting that the offending truck was insured with it, opposed the application on the ground that the applicants have not given the details how accident had occurred and about the income and age of the deceased. So also it has opposed the application on the ground that the owner of the offending truck committed breach of terms and conditions of the insurance policy as the driver of the said truck had licence to drive transport vehicle and he drove the heavy vehicle i.e. offending truck at the material time of accident and thus opponent No.2 insurance company prayed to dismiss the petition.

5. After considering the evidence adduced by the claimants/applicants and the insurance company, the

learned Tribunal observed that the driver of the offending truck had licence to drive transport vehicle and he had no licence to drive heavy vehicle, but he drove the offending truck i.e. heavy vehicle and as such opponent No.1 – owner of the truck committed breach of the terms and conditions of the insurance policy and as such passed the award as stated earlier, directing opponent No.2 insurance company to pay compensation amount to the applicants and then to recover the said amount from opponent No.1 – owner of the truck by the impugned judgment. Therefore, the appellant-insurance company is in appeal before this Court.

6. Mr. Kadethankar, learned Advocate appearing for the appellant/opponent No.2 - insurance company submitted that as opponent No.1 – owner of the offending truck has committed breach of the terms and conditions of the insurance policy as driver of the truck had no licence to drive heavy vehicle, the directions issued by the Tribunal to the insurance company to pay the amount of

compensation and then to recover the same from the owner of the truck are not correct and therefore said directions are liable to be set aside and claim petition is to be dismissed against opponent No.2. Therefore, appeal needs to be admitted.

7. On the other hand Mr.Mayure, learned Advocate appearing for the claimants/applicant Nos.1 to 5 relying on the decision of the Apex Court in the case of **S.Iyyapan Vs. United India Insurance Company Ltd., 2013(6)Mh.L.J.1**, submitted that the deceased was third party. The breach of terms and conditions of the insurance policy by opponent No.1 owner as driver of the truck had no licence to drive heavy vehicle does not amount to fundamental breach of terms and conditions of the insurance policy as the driver had licence to drive transport vehicle and therefore the directions issued by the Tribunal to the insurance company to pay amount of compensation to the claimants and then to recover the same from the owner of the truck are correct and there is

no reason to interfere with the said directions and ultimately in the judgment and award in view of the above settled legal position. In **S. Iyyappan (Supra)**, it was held the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy. Admittedly, the driver was holding a valid driving licence to drive light motor vehicle. The motor vehicle in question, by which accident took place, was Maxi Cab. Merely because the driver did not get any endorsement in the driving licence to drive Maxi Cab, which is a light motor vehicle, the High Court committed grave error of law in holding that the insurer is not liable to pay compensation because the driver was not holding the licence to drive the commercial vehicle. The impugned judgment is, therefore, liable to be set aside. The insurer is liable to pay the compensation so awarded to the dependents of the victim of the fatal accident. Learned Advocate for the claimants thus submitted that the appeal need not be admitted and it may be dismissed.

8. In the present case, there is no dispute that the truck of opponent No.1 involved in the accident was validly insured with opponent No.1 – insurance company at the material time of accident. There is also no dispute that it is proved by the original claimants that the accident occurred due to negligent driving of the offending truck by its driver while he was in the employment of opponent No.1 – owner of the truck. It is also proved by the claimants that the driver of the truck had licence to drive transport vehicle and it was found by the Tribunal that he drove offending truck which is a heavy vehicle. This shows that by driving offending

truck, the owner of the truck has not committed fundamental breach of the conditions of the insurance policy. Therefore, relying upon ratio laid down by the Apex Court in the case of **S.Iyyapan (Supra)**, no fault can be found with the directions issued by the Tribunal to opponent No.1 – insurance company to pay amount of compensation to the claimants and then to recover the same from the owner of the offending truck by passing impugned judgment and award.

9. Therefore, I find that it is not necessary to admit the appeal as there is no merit in the appeal. The same is liable to be dismissed. Accordingly, the appeal is dismissed, leaving the parties to bear their own costs in the circumstances present in the case.

10. 50% amount out of amount deposited by opponent No.1 – insurance company, which is kept in the fixed deposit in the nationalized bank as per order dated 29.04.2011 of this Court, shall be paid to original

claimants with interest accrued on the said amount in the proportion already decided as per impugned judgment and award of the Tribunal, on identification by the Advocate representing them by account payee cheque/s.

11. In view of dismissal of First Appeal, Civil Application No.1364 of 2011 for stay, does not survive and stands disposed of.

[S.M.GAVHANE,J.]

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