IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3449 OF 2019
WITH CA/9726/2019 IN FA/3449/2019

Meenabai w/o Popat Mhaske,
Age 49 years, Occ. Household,
R/o. RX-6-18/2, Bajajnagar,
MIDC Waluj, Tq. & Dist.
Aurangabad. …**Appellant**
(Original respondent No. 1)

VERSUS

1) The Manager,
Bajaj Allianz General Insurance
Co. Ltd. GE Plaza, Airport road,
Yermala, Pune. … **Original respondent No. 3**

2) Mrs. Surekhabai wd/o Baban Dhule,
Age 41 years, Occ. Household,
R/o. RM-285, Shivlaya Chouk,
Bajaj Nagar, MIDC Waluj, Aurangabad.

3) Chandrakala d/o Baban Dhule,
Age 24 years, Occ. Education,
R/o. As above.

4) Jaishree D/o Baban Dhule,
Age 20 years, Occ. Education
R/o. As above.

5) Sandhya d/o Baban Dhule,
Age 22 years, occ. Education,
R/o. As above.

6) Pratiksha D/o Baban Dhule,
Age 20 years, occ. Education,
R/o. As above.

7) Prafull s/o Baban Dhule,
Age 18 years, occ. Education,

R/o. As above. ….(Respondents No. 2 to 7 are Orig. Claimants.)

8) Narayan Babasaheb Dhande, … Orig. Respondent No. 2
Age 35 years, Occ. Driver,
R/o. Village Limba, Tq. Sirur,
Dist. Beed. … **Respondents**.

…

Advocate for the Appellant : Mr. Manoj Shinde, h/f Mrs. Savita P. Kakade.
Advocate for respondents No. 1 : Mr. S.G. Chapalgaonkar.
Advocate for respondents No. 2 to 7 : Mr. V. P. Kadam.
Advocate for respondent No. 8 : Surekha Devmane.

CORAM	**:**	**MANGESH S. PATIL, J.**
RESERVED ON	**:**	**28/11/2019**
PRONOUNCED ON	**:**	**09/01/2020.**

JUDGMENT :

Heard. Rule. The learned advocate Mr. Chapalgaonkar waives service for the respondent No. 1. The learned advocate Mr. Kadam waives service for the respondent Nos. 2 to 7. Surekha Devmane waives service for the respondent No. 8. At the request of both the sides the appeal has been heard finally at the admission stage.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 by the owner of the offending vehicle, being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P No. 96/2012, dated 28.11.2019 thereby allowing the claim lodged by the respondent Nos. 2 to 7 under Section 166 of that Act on account of death of the husband of respondent No. 2 Baban in a motor accident which took place on 09.10.2011 at about 6 p.m. near FDC Company, MIDC, Waluj, Aurangabad, wherein he was knocked down by the offending vehicle

bearing No. MH-16/Q-2628, which was owned by the appellant and was being driven by the respondent No. 8 and was insured with the respondent No. 1/Insurance Company. The Tribunal awarded compensation of Rs. 24,55,857/-, however, it held the appellant and the respondent No. 8 i.e. owner and the driver alone to be jointly and severally liable to pay the compensation but exonerated the respondent No. 1/Insurance Company on the ground of breach of the terms and conditions of the policy holding that the respondent No. 8 was not having valid driving licence on the date of the accident.

3. At the out set it is necessary to note that the respondent Nos. 2 to 8 have preferred any appeal against the impugned judgment and order to the extent it exonerates the respondent No. 1/Insurance Company. Even the appellant/owner in the entire appeal-memo has not assailed the impugned judgment and order to the extent it determines the quantum of compensation. The only emphasize and the ground in the appeal-memo is to the extent of the observations and the conclusions of the Tribunal holding that there was breach of the terms and conditions and that the respondent No. 1/Insurance Company stood exonerated from the liability to indemnify the appellant/owner. The scope of the appeal therefore is in a narrow compass.

4. The learned advocate for the appellant/owner vehemently submitted that the Tribunal has erred in appreciating the evidence and the observations and the conclusions drawn by it exonerating the respondent No. 1 are grossly perverse and arbitrary. The learned advocate would submit that primarily the burden was on the respondent No. 1/Insurance Company to prove that there was breach of the terms and conditions. Though it led the evidence by examining a witness from the R.T.O. office Beed namely Namdeo Wagh, even the

appellant subsequently examined another officer from the same R.T.O. office by name Prashant Shinde who specifically stated that the driving licence of the respondent No. 8 driver stood renewed and covered the date of the accident. The learned Member of the Tribunal has clearly erred in discarding the testimony of Prashant Shinde by perversely observing that he was posted in the R.T.O. Office at Aurangabad and could not have deposed anything about the record of the R.T.O. office at Beed, in paragraph No. 22 of the impugned judgment and order. He would further submit that there was sufficient evidence to show that the driving licence of the respondent No. 8/driver was duly renewed for the period 17.03.2011 to 16.03.2014 and the fact was duly established by producing a certified copy of the relevant register (Exh. 128) and the certified copy of the driving licence (Exhibit 38). Both of which bear a specific endorsement about such renewal. The learned Member of the Tribunal has without any reason ignored this evidence and has wrongly exonerated the respondent No. 1/Insurance Company.

5. The learned advocate for the respondent No. 1/Insurance Company submitted that there is no error committed by the Tribunal in appreciating the evidence. Though it was apparently a mistake in discarding the evidence of witness Prashant Shinde under a mistaken belief that he was from R.T.O. Office at Aurangabad when in fact he was posted at R.T.O. Office, Beed at the material time, still even if the evidence is to be reappreciated in this Appeal, the conclusion drawn by the Tribunal is unassailable and can be supported from the evidence on record.

6. Admittedly, the appellant was the owner of the vehicle and the respondent No. 8 was driving it at the material time. The accident occurred on 09.10.2011. A certified copy of the driving licence of the

respondent No. 8/driver (Exhibit 38) bears an endorsement to the effect that the licence was renewed and was valid for the period between 17.03.2011 and 16.03.2014 and obviously in his deposition the respondent No. 8 has substantiated these facts. It is also apparent that the appellant examined Prashant Shinde who was working as a Junior Clerk in the R.T.O. office at Beed and deposed that as per the entries in the record of his office the licence was valid from 17.03.2011 to 16.03.2014 and the renewal fees was duly paid under a receipt dated 17.03.2011. He further deposed that the certified copy of the relevant record of the R.T.O. office (Exhibit 114) was issued by his office which certifies that the driving licence was renewed for the relevant period.

7. It is quite apparent that the learned Member of the Tribunal has refused to rely upon the testimony of this witness Prashant Sinde on the ground that he was an officer posted in the R.T.O. Office at Aurangabad and could not have deposed about renewal of licence from the Office of R.T.O. Beed.

8. But then a minute scrutiny of the evidence would clinchingly demonstrate that there is indeed something fishy in respect of the record of the R.T.O. Office at Beed which compels a man of ordinary prudence to doubt the evidence led by the appellant.

9. As can be seen, the appellant as well as the respondent No. 1/ Insurance Company both have called witnesses from the R.T.O. office Beed and have also produced on record the relevant extracts of the concerned register wherein entries are made while issuing licences. Admittedly, it is the respondent No. 1/Insurance Company which led the evidence before the evidence was led by the appellant/owner. The

respondent No. 1/Insurance Company initially called upon a witness from R.T.O. Office Beed Mr. Namdeo Wagh who by going through the record of his Office specifically stated that the respondent No. 8/driver was not having valid and effective driving licence as per the record of his office on the date of the accident i.e. 09.10.2011 and that there was no entry in the record of his office to show that the licence was renewed for the period from 01.02.2011 to 21.12.2012. In support of his testimony he also produced the particulars of driving licence certificate (Exhibit 77) and the photo copy of the extract of the relevant register (Exhibit 78). Testimony of this witness Namdeo Wagh was recorded on 08.07.2014.

10. It is thereafter that the appellant/owner led the evidence and examined the respondent No. 8/driver and then called upon witness Prashant Shinde from R.T.O. Office Beed. Testimony of this witness was recorded on 03.07.2018 and another photo copy of the same register of driving licences (Exhibit 128) was got exhibited during his testimony. Similarly, another certificate regarding particulars of MDL (Exhibit 112) was also produced bearing an endorsement that the licence stood renewed for the period from 17.03.2011 to 16.03.2014.

11. Both these extracts (Exhibit 78 and Exhibit 128) are the photo copies of the same page No. 16 of the relevant original register bearing endorsements made therein from time to time in respect of the driving licence issued to the respondent No. 8/driver, it is quite apparent that the extract (Exhibit 78) on the reverse side does not contain any endorsement about renewal of the driving licence on 17.03.2011 but the extract (Exhibit 128) does contain an endorsement about such renewal on the reverse page. Taking into account the fact that both these extracts bear an endorsement of the Superintendent of

the District Court Aurangabad one will have to proceed on the conclusive presumption that the original register which was brought before the Superintendent on 08.07.2014 when the first extract (Exhibit 78) was produced, it was not bearing any endorsement about renewal. Whereas, when the original register was again brought to the Court on 03.07.2018 it was containing an endorsement to the effect that the licence was renewed for the period from 17.03.2011 to 16.03.2014 purportedly recorded on 17.03.2011.

12. At the cost of repetition it is necessary to emphasis that both these extracts (Exhibits 78 and 128) are the photo copies of the same pages. It is apparent that the additional endorsement about renewal of the licence dated 17.03.2011 was put after the first extract (Exhibit 78) was produced on 08.07.2014. The whole emphasis of the learned advocate for the respondent No. 1/Insurance Company has been on this discrepancy and apparent forgery.

13. At the first blush the argument seems to be quite impressive. But simultaneously there is one more piece of evidence which clearly rebuts this argument and stand of the respondent No. 1/Insurance Company. A photo copy of the driving licence duly certified by the concerned officer incharge of the Police Station as a true copy (Exhibit 38) produced by the respondent Nos. 2 to 7 with the claim petition as a part of various police papers i.e. Crime Detail Form (Exhibit 14), Post Mortem notes (Exhibit 35), Certificate-cum-policy (Exhibit 36) and the Certificate of Registration (Exhibit 37), as a bunch of papers and all these documents were produced on 06.10.2013. These documents have also been duly verified by the Superintendent of the District Court from the original. If such is the state of affairs, when the driving licence produced on record in the year 2012 as a part of the police

papers clearly bears an endorsement under the signature and stamp of the concerned Deputy R.T.O. Beed mentioning that the licence was renewed for the period from 17.03.2011 to 16.03.2014 by accepting licence fees of Rs. 100/- and bears the receipt number and the date of renewal as 17.03.2011, in my considered view that should be the end of the matter. This piece of evidence clinchingly demonstrates that the respondent No. 8/driver was holding a valid and effective driving licence for the period which covered the date of the accident.

14. True it is that the extracts of the relevant register (Exhibit 78 and 128) are discrepant in as much as the latter bears an endorsement regarding such renewal dated 17.03.2011 when it is absent on the former. At the most it can be said that it is a mischief and may constitute forgery. However, even this extract (Exhibit 78) which was issued first in point of time was obtained in the year 2014 and it did not bear any endorsement about its renewal but the driving licence (Exhibit 38) itself contains such an endorsement which was placed on record prior to the year 2014 and was available to be seen in the police papers when the petition was filed.

15. Coupled with these state of affairs, even the appellant has examined the concerned Investigation Officer Mr. Sanap as a witness and he specifically admitted to have collected the verified copy of the driving licence (Exhibit 38) and relevant Form No. 54 was submitted to the Court. Not only this but he specifically admitted that it is for this reason that no offence punishable under Section 181 read with Section 3 of the Motor Vehicles Act was charged which otherwise was available against a person driving a vehicle without holding a valid driving licence.

16. It is in view of such peculiar state of affairs that in my considered view the discrepancy in the two extracts (Exhibits 78 and 128) needs to be overlooked and is not material one.

17. The learned Member of the Tribunal has not at all considered and discussed this evidence and has readily discarded the testimony of witness Prashant Shinde and accepted the testimony of another employee Namdeo Wagh. There is absolutely no whisper in the impugned judgment as to why the endorsement on the driving licence (Exhibit 38) to the effect that the driving licence was renewed on 17.03.2011 should be discarded. Had he examined this evidence and considered the aforementioned aspects he would not have reached the conclusion which he has, while exonerating the respondent No. 1/Insurance Company. The observations and the conclusions drawn by the learned Member of the Tribunal are grossly perverse and arbitrary and are liable to be reversed. He has clearly erred in holding that there was breach of the terms and conditions and that the respondent No. 1/Insurance Company was entitled to be exonerated.

18. There is one more aspect which clearly demonstrates that the learned Member of the Tribunal has even not considered the trite principle endorsed by the Supreme Court time and again in catena of judgments that in such cases of breach of terms and conditions, a direction could be issued to the insurer to first pay the compensation and then to recover it from the insured. This clearly demonstrates non application of mind by the learned Member of the Tribunal.

19. Appeal, therefore, succeeds. The impugned judgment and award to the extent it exonerates the respondent No. 1/Insurance Company is quashed and set aside. Instead, the impugned order is

modified and it is held that the appellant/owner, respondent No. 1/Insurance Company, and respondent No. 8/driver are jointly and severally liable to pay the compensation to the respondent Nos. 2 to 7 with interest as determined by the Tribunal.

20. The First Appeal is disposed of accordingly. Pending Civil Application shall stand disposed of.

(MANGESH S. PATIL, J.)

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