IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PRACHI PRANESH NANDIWADEKAR
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FIRST APPEAL NO.1393 OF 2013

National Insurance Company Limited .. Appellant
Vs.
Vasant Shankar Sutrar & Ors. .. Respondents

Mr.Nikhil Mehta i/by M/s.KMC Legal Venture for the appellant.
Mr.S.A. Ghaisas for the respondent nos.1 to 3.

CORAM : R.D.DHANUKA, J.
DATE : 6th January 2020

P.C.:

. By this first appeal filed by the original applicant (original respondent no.2), the appellant has impugned the judgment and award dated 13th March 2013 passed by the Motor Accident Claims Tribunal, Raigad-Alibaug allowing the application filed by the respondent nos.1 to 3 and directing the appellant and the respondent no.4 herein to pay jointly and severally Rs.8,42,000/- @7.5% p.a. from the date of application till payment.

2. None appears for the respondent no.4 though notice of final hearing was served upon the respondent no.4 by publication pursuant to the order passed by this Court.

3. The appellant has impugned the said judgment and award only to the extent that the said judgment and award does not pass any order granting liberty to the appellant to first pay decreetal amount to the original respondent nos.1 to 3 and to recover the said amount from the respondent no.4 under Section 149 of the Motor Vehicles Act, 1988.

4. Mr.Mehta, learned counsel for the appellant invited my attention to the grounds raised in paragraph (k) and (l) of the appeal memo. He also invited my attention to the findings rendered by the Tribunal recording submissions made by the appellant in paragraph 17 and appreciation of evidence in paragraph 18. He submits that the driving license of the driver of the offending vehicle was fake. The appellant had examined the witness Shri Arvind Savant, working as Junior Clerk at Regional Transport Office (RTO), Mumbai who had produced the office records showing the name of Vinesh Jayraj Hitlor having driving license from 8th February 2007 to 9th June 2007 and 27th January 2009 to 26th January 2012. The said witness also produced a Certificate issued by the RTO, Mumbai which was marked as Exhibit-46 on which the driving license number was mentioned.

5. Learned counsel for the appellant submits that accident had

taken place on 3rd August 2007 when the said driver of the offending vehicle had possessed fake license. Learned counsel also tenders a copy of extract of the driving license of the witness Vinesh Jayraj Hitlor examined by the appellant before the Tribunal which would clearly indicate that the said license was valid for the period from 8th February 2007 to 9th June 2007.

6. It is submitted that though the records of the RTO was produced before the Tribunal clearly proving that the license produced by the driver of the offending vehicle was fake license at the time of accident, the Tribunal has totally overlooked that crucial part of the evidence and has held the appellant and the respondent no.4 herein liable to pay jointly and severally Rs.8,42,000/- @7.5% p.a. from the date of application till payment. He submits that since it was the case of fake license, the Tribunal ought to have passed an order under Section 149 of the Motor Vehicles Act, 1988 and ought to have permitted the appellant to recover the said decreetal amount from the respondent no.4.

7. Learned counsel for the appellant placed reliance on the judgment of this Court delivered on 20th December 2019 in the case of ***The Oriental Insurance Co. Ltd. Vs. Dinesh Anantrao Hingu & Anr.***

in First Appeal No.524 of 2013 and other companion matters and would submit that after adverting to the judgment of the Supreme Court, this Court has clearly held in the said judgment that if the Insurance Company proves before the Tribunal that the driver of the offending vehicle did not have valid license or did not possess license at the time of accident, the Insurance Company, in that event, would be at liberty to recover the amount which Insurance Company is liable to pay at the first instance to the claimant from the owner of the offending vehicle under Section 149 of the Motor Vehicles Act, 1988.

8. Learned counsel for the respondent nos.1 to 3 is not in a position to distinguish the judgment of this Court delivered on 20th December 2019 in the case of ***The Oriental Insurance Co. Ltd. Vs. Dinesh Anantrao Hingu & Anr.(supra)*** in so far as right of recovery of the appellant under Section 149 of the Motor Vehicles Act, 1988 is concerned.

9. A perusal of the record indicates that though the appellant had examined the Junior Clerk from Regional Transport Office, Mumbai who had produced the office records showing the license in the name of Vinesh Jayraj Hitlor from 8th February 2007 to 9th June 2007 and 27th January 2009 to 26th January 2012, the Tribunal totally overlooked

this crucial part of the evidence which clearly indicated that on the date of the accident which took place on 3rd August 2007, the said Vinesh Jayraj Hitlor did not have valid license. The license found in possession of the driver of the offending vehicle was ex facie fake license on the date of the accident.

10. In my view, Mr.Mehta, learned counsel for the appellant is right in his submission that the findings rendered by the Tribunal in paragraph 18 of the impugned judgment and award is ex facie erroneous ignoring the evidence led by his client.

11. This Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Dinesh Anantrao Hingu & Anr.(supra)*** after adverting to the judgment of the Supreme Court in the case of ***Pappu & Ors. Vs.Vinod Kumar Lamba and Anr., (2018) 3 SCC 208*** and in the case of ***National Insurance Company Vs. Swaran Singh, (2004) 3 SCC 297*** has held that the insurance company can be fastened with the liability on the basis of a valid insurance policy and on the basis of valid driving license held by the driver of the offending vehicle and not otherwise. In this case, the appellant had specifically led evidence of the Junior Clerk from RTO who had produced the record from the office of RTO. The principles of law laid down by this Court in the case of ***The Oriental Insurance Co.***

Ltd. Vs. Dinesh Anantrao Hingu & Anr.(supra) would apply to the facts of this case. In my view, the judgment and award of the Tribunal is contrary to the principles of law laid down by this Court in the said judgment of this Court in the case of ***The Oriental Insurance Co. Ltd. Vs. Dinesh Anantrao Hingu & Anr.(supra)*** and thus deserves to be set aside in so far as the Tribunal has not permitted the appellant to recover the amount payable to the respondent nos.1 to 3 from the respondent no.4 by filing execution the application under Section 149(2) of the Motor Vehicles Act, 1988.

12. The judgment and award dated 13th March 2013 passed by the Tribunal is modified as under : -

(i) The appellant would be entitled to recover the amount directed to be paid by the Tribunal by the judgment and award dated 13th March 2013 from the respondent no.4 under Section 149(2) of the Motor Vehicles Act, 1988 after such payment is first released in favour of the respondent nos.1 to 3 out of the amount deposited by the appellant.

(ii) The respondent nos.1 to 3 would be at liberty to withdraw the balance amount out of the amount deposited by the appellant with the MACT with interest as directed by the Tribunal and to execute the decree for the shortfall amount if any.

(iii) The appellant would be at liberty to recover the said amount paid by the appellant from the respondent no.4 by filing an execution application under Section 149(2) of the Motor Vehicles Act, 1988.

(iv) Rest of the judgment and award dated 13th March 2013 remains unaltered.

(v) Office is directed to transmit the statutory deposit of Rs.25,000/- to the MACT, **Raigad-Alibaug** expeditiously.

13. First appeal is disposed of in aforesaid terms. In view of disposal of the appeal, pending civil application, if any, does not survive and is disposed of. Parties as well as the Trial Court to act on the authenticated copy of this order.

R.D.DHANUKA, J.

(This order is corrected vide speaking to the minutes of the order dated 3rd May 2023.)