**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1513 OF 2012

United India Insurance Co.Ltd.,
Through its Divisional Manager and
authorised representative & Signatory,
Jalgaon Divisional office,
Mansingh Market, IInd floor,
Near Railway Station, At and Post &
District Jalgaon .. Appellant

Versus

1. Sayyad Noora Syd.Nabi Manyar,
Age 48 years, Occu. nil

2. Sayyad Jarina Syd. Noora Manyar,
Age 42 years, Occu. Household,
Both R/o Deshmukh wada,
Paldhi Bk., Taluka Dharangaon,
District Jalgaon

3. Baldeobai Judevbhav Chavda,
Age major, Occu. Truck owner,
R/o Badoi, Taluka Kotda Sanghani,
District Rajkot, Gujarat State .. Respondents

Mr A.B. Gatne, Advocate for appellant
Mr M.M. Bhokarikar, Advocate for respondents no.1 and 2
Respondent no.3 - absent though duly served

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 22nd NOVEMBER, 2021

ORAL JUDGMENT :

1. This appeal is directed against the impugned judgment and award dated 3rd May 2012, passed in M.A.C.P. No.43/2004 by the Member, M.A.C.T. at Jalgaon.

2. Heard Mr Atul B. Gatne, learned Counsel for the appellant and Mr M.M. Bhokarikar, learned Counsel for respondents no.1 and 2/original claimants. None present for respondent no.3. Perused the impugned

judgment and award passed by the Member, M.A.C.T., Jalgaon and record and proceedings of the trial Court.

3. The main focus of the argument of Mr Gatne, learned Counsel for the appellant is on the driving licence of the truck driver involved in the accident.

4. Mr Gatne, learned Counsel for the appellant submitted that the truck was insured with the appellant. The policy was valid on the date of accident, however, driving licence of the truck driver produced on record by the claimants indicates that said driving licence was not valid and effective on the date of accident. He submitted that as per the terms and conditions of the insurance policy, if a person is not possessing valid and effective driving licence not entitled to drive the truck/vehicle. The truck driver in this case has driven the truck in contravention of the terms and conditions of the insurance policy and, therefore, the appellant/Insurance Company is not liable to pay any compensation to the claimants. He submitted that the order of pay and recover passed by the M.A.C.T., Jalgaon against appellant/Insurance Company is bad in law and pressed need to modify the impugned operative part of the judgment and award passed by the Tribunal.

5. Per contra, Mr Bhokarikar, learned Counsel for the original claimants/respondents no.1 and 2 supported the impugned judgment and award passed by the Tribunal. He submitted that it is a third party claim. The Tribunal has considered this aspect and rightly passed the order of pay and recover against appellant/Insurance Company by referring the

citation of the Apex Court. He submitted that there is no merit in the appeal and appeal needs to be dismissed.

6. I have considered the argument advanced by learned Counsel for both the sides. Perused the impugned judgment and award, more particularly, finding recorded against issue no.2.

7. The accident took place on 7.12.2003 at about 12.15 p.m. Sayyad Shahrukh (since deceased), a boy of ten years old, while crossing national highway no.6 at Paldhi near Savada Chowfulli knocked down by the truck No.GJ-03/U-4002 due to rash and negligent driving of the truck driver. The truck involved in the accident was owned by original respondent no.1 and insured with respondent no.2/appellant on the date of accident. The Tribunal, after considering the facts of the claim petition and evidence on record and looking to the legal position was pleased to allow the accident claim against respondent no.1/owner of the truck and directed him to pay compensation of Rs.1,60,000/- (Rs.One Lakh Sixty thousand only) to the claimants inclusive of amount of N.F.L. with interest at the rate of 7.5% per annum from the date of application till the realisation of entire amount.

8. On careful reading of the impugned judgment and award, it is evident that the claim petition came to be allowed against respondent no.1/owner of the truck. The claim petition stands dismissed against the Insurance Company/Appellant. The Tribunal has directed to the appellant/ Insurance Company to pay the above said amount of compensation to the

original claimants and then recover the same from the owner of the truck/respondent no.1.

9. It is a third party claim. A boy of ten years age while crossing national highway no.6 at Paldhi near Savada Chowfulli met with an accident and died on the spot due to rash and negligent driving of the truck driver involved in the accident. It is not a case of appellant/Insurance Company that truck driver was not at all having licence to drive the truck. It is the defence of the Insurance Company/appellant that on the date of the accident, driving licence was not valid and effective. That plea has been considered by the Member, M.A.C.T., Jalgaon and rightly dismissed the claim petition against the appellant/Insurance Company. The question is about direction to pay and recover issued by the Tribunal. The law on this point is settled. It would be proper to lay hand on the citation in the case of **National Insurance Co. Ltd. Vs. Swaran Singh and Ors.,** reported in **(2004) 3 SCC 297,** wherein the Honourable Supreme Court has considered the meaning of "Duly licensed", "effective licence", "fake licence" and the claim of third party victims of motor vehicle accidents in terms of Section 149 (1) (4) (5) (7) read with Section 147 (2) of the Motor Vehicles Act, 1988.

10. The Honourable Supreme Court has held about rights of third parties and extent of liability of insurer in terms of Section 149 (1) of the Motor Vehicles Act, 1988. The relevant para of the decision of Honourable Supreme Court reads thus :

" The liability of the insurance company to satisfy the decree at the first instance and to recover the awarded amount from the owner or driver thereof has been holding the field for a long time. It is the well-settled rule of law and should not ordinarily be deviated from. Apart from the reasons stated below, the Supreme Court is persuaded by the doctrine of stare decisis not to deviate from the said principle.

A third-party claim arises when a victim of an accident suffers a bodily injury or death as a result thereof or his property is damaged. The insurer's liability arises both from contract as well as statute. It, therefore, may not be proper to apply the rules for interpretation of a contract for interpreting a statute.

By reason of the provisions contained in the Act, a more extensive remedy has been conferred upon those who have obtained judgment against the user of a vehicle and after a certificate of insurance is delivered in terms of Section 147 (3).

Section 149 (1) casts a liability upon the insurer to pay to the person entitled to the benefit of the decree "*as if he were the judgment-debtor*", that is, the statute raises a legal fiction to the effect that for the said purpose the insurer would be deemed to be a judgment-debtor in respect of the liability of the insurer."

11. Having regard to the legal position made clear by the Honourable Supreme Court in case of third party claims of victims of

accidents, it is the liability of the Insurance Company to satisfy the award first and recover the awarded compensation from the owner or the driver.

12. There is no merit in the appeal.

ORDER

(i) The Appeal stands dismissed.

(ii) The impugned judgment and award passed in M.A.C.P.No.43/2004 dated 3rd May 2012 by the Member, M.A.C.T., Jalgaon is hereby confirmed.

(iii) The amount of compensation, if any deposited by the appellant/ Insurance Company be remitted to the Tribunal, for payment as per the award.

(iv) Record and Proceedings be sent back to the Tribunal.

(v) The Appeal stands disposed of accordingly.

(SHRIKANT D. KULKARNI, J.)

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