IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2198 OF 2015
WITH
CIVIL APPLICATION NO.10602 OF 2015
CIVIL APPLICATION NO.10603 OF 2015

HDFC ERGO General Insurance Co. Ltd., .. Appellant [original Resp.No.2]
6th Floor, Leela Business Park,
Andheri Kurla Road, Andheri (East),
Mumbai – 400 059.
Through its Branch Manager / Authorized Signatory at Aurangabad

VERSUS

.. Respondents [Resp.No.1 to 4 – ori. claimants] (No.5–ori. Resp. No.1]

1. Tulsabai w/o. Rambhau Dhawale
   Age. 56 years, Occ. Nil,

2. Babasaheb s/o. Rambhau Dhawale
   Age. 39 years, Occ. Labour

3. Shivaji s/o. Rambhau Dhawale
   Age. 35 years, Occ. Labour

4. Yamunabai wd/o. Shriram Dhawale,
   Age. 80 years, Occ. Nil,
   (Since died, during pendency of claim petition, Through LRs Nos.1 to 3)

5. M/s. Satish Cargo Movers
   Having its office at Saswad,
   Tq. Purandar, Dist. Pune.
   310/A/4 Somathe Phata, Opposite to Toll Plaza, Mumbai Pune Highway,
   Talegaon Dabhade, Pune,
   Tq. & Dist. Pune.

Mr.S.G. Chapalgaonkar, Advocate for the appellant.
Mr.S.R. Zambre h/f. Mr.N.B. Narwade, Advocate for respondent Nos. 1 to 3.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 04.03.2021
PRONOUNCED ON : 24.03.2021

J U D G M E N T :-

01. This appeal is directed against the judgment and award dated 24.04.2015, passed by the learned Chairman, Motor Accident Claims Tribunal, Ahmednagar, in MACP No.577 of 2010, whereby the claim of respondent Nos.1 to 3-claimants for compensation for the death of Rambhau [deceased] in a vehicular accident came to be allowed and the appellant-insurer and respondent No.5-owner were ordered to jointly and severally pay compensation of Rs.3,27,000/- along with future interest @ 9% p.a. from the date of petition till realization.

02. Shorn of unnecessary details, the background facts can be stated as under :-

a] Rambhau, the deceased, husband of respondent No.1-Tulsabai and father of respondent Nos.2 and 3, was an agriculturist. On 05.09.2010, while the deceased was proceeding on Aurangabad-Ahmednagar road, on his Moped, the offending goods truck bearing No. MH-12-R-8291, owned by respondent No.5 and insured with the appellant came from behind and gave a violent dash to the moped, which the deceased was riding. The deceased eventually succumbed to the injuries. A claim petition for compensation came to be filed by respondent Nos.1 to 3 and Yamunabai, mother of the deceased, who expired during the pendency of the petition.

b] The petition proceeded ex-parte against respondent No.5-owner.

c] The appellant/insurer resisted the petition by filing written statement [Exh.20]. It was, inter alia, contended that the person, who was driving the vehicle MH-12-R-8921 at the time of alleged accident, was not possessing an effective and valid driving licence. The factum of insurance was, however, not put in contest.

d] Respondent Nos.1 to 3 adduced the evidence of Tulsabai-respondent No.1, in support of the claim. Relevant documents were also tendered for perusal of the Tribunal.

e] After appraisal of the evidence and material on record, the learned Chairman was persuaded to allow the petition holding, inter alia, that the accident occurred due to the negligence of the driver of the offending truck. Respondent Nos.1 to 3 were thus entitled to compensation. The multiplicand was reckoned at Rs.36,000/-. Assuming the age of deceased Rambhau to be in between 61 to 65 years, multiplier of '7' was applied. Loss of dependency was thus worked out at Rs.2,52,000/-. Adding thereto, further compensation under the traditional heads, the Tribunal was persuaded to award compensation of Rs.3,27,000/-. Since the factum of insurance was not put in contest, the owner and insurer were saddled with joint and several liability to pay the compensation so awarded.

f] Being aggrieved by and dissatisfied with the impugned judgment and award, the appellant/insurer is in appeal.

03. I have heard Mr. Chapalgaonkar, learned Counsel for the appellant and Mr.Zambre, learned Counsel for respondent Nos.1 to 3 at some length.

04. Mr.Chapalgaonkar, learned Counsel for the appellant would urge that, in the case at hand, the insurer could demonstrate that the person, who was at the wheel of the offending truck at the time of accident, was not holding a valid and effective driving licence. In fact, during the pendency of the petition, the appellant/ insurer had made earnest endeavour to bring the material on record to bolster up its defence that the driver was not

holding a valid and effective licence and thus there was breach of the conditions of insurance, which absolved the insurer of the liability to indemnify the insured/owner. However, the material could not be placed on the record of the Tribunal before pronouncement of the judgment and award. Hence, the appellant has preferred application seeking permission to place on the record of the Court a communication received from the Information Officer, RTO Office, Jagatpura, Jaipur, in respect of the driving licence No.112381/02/jaipur, which was allegedly issued in the name of Mahadev Shinde, who was at the wheel of the offending truck.

05. Mr.Chapalgaonkar would urge that in view of said communication dated 16.04.2015, which records in clear and explicit terms that the above numbered driving licence was not issued by the office of RTO, Jagatpura, Jaipur, it would be expedient in the interest of justice to allow the appellant to lead additional evidence and, thus, remit the matter back to the Tribunal for afresh

determination. It was further submitted that the claimants may be permitted to withdraw the entire amount deposited by the appellant/insurer, so that the remand of the matter does not operate to the prejudice of respondent Nos.1 to 3 – claimants.

06. In contrast to this, Mr. Zambre, learned Counsel for respondent Nos.1 to 3 submitted that the appellant-insurer did not take pain to lead evidence despite ample opportunity. Even there was no foundation in the pleading to the effect that the driving licence was allegedly fake. In the circumstances, at this stage, this Court may not permit the appellant-insurer to lead additional evidence as it would cause serious prejudice to the claimants, urged learned Counsel for respondent Nos.1to3.

07. Evidently, the thrust of the submission on behalf of the appellant is that there was breach of condition of insurance as Mr.Mahadev Shinde, the person who was driving the offending truck at the time of

accident, was not holding a valid and effective licence. The licence, copy of which was tendered before the Tribunal, was fake. This issue bears upon the liability of the insurer to indemnify the insured. In case of conscious and willful breach of the condition of insurance, the insurer cannot be called upon to satisfy the award.

08. I have perused the copy of the communication dated 16.04.2015, which was sought to be pressed into service to lend support to the submission that Mr. Shinde was not holding a valid and effective licence as the licence, on which the claimants and respondent No.5-owner banked upon, was not at all issued by the concerned transport authority.

09. The submission is required to be appreciated in the backdrop of the nature of the pleading before the Tribunal and the efforts put in by the insurer to bolster up its defence. In the written statement there is a

contention that at the material time of the alleged incident, the person who was driving vehicle No. MH-12-R-8291 was not possessing effective and valid driving licence. Therefore, there was breach of the condition of insurance and, thus, the insurer was not liable to pay the compensation.

10. It is imperative to note that the defence that the driver was not holding an effective and valid licence was raised in general terms. It was not the case of the insurer that no such licence was issued by the transport authority and it was fake. In this context, the Tribunal observed that the fact that the driver was holding licence was neither disputed nor objected to. From the perusal of the record and proceedings before the Tribunal, it does not appear that any serious endeavour was made on behalf of the appellant-insurer to buttress its defence that the driver was not holding a valid and effective licence.

11. Even if the case of the appellant insurer is taken at par and construed rather generously then also the mere fact that the insurer could establish that the licence in question was not issued by the stated transport authority, is not sufficient to absolve the insurer of the liability. The legal position on this point is settled by a catena of decisions.

12. A useful reference, in this context, can be made to a Three Judge Bench judgment in the case of **<u>National Insurance Co. Ltd. Vs. Swaran Singh and Others, (2004)3 SCC 297</u>**, wherein it was observed that :-

> "110. The summary of our findings to the various issues as raised in these petitions are as follows:
> (i) x x x x
>
> (ii) x x x x
>
> (iii) <u>The breach of policy condition e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time</u>.
>
> (iv) x x x x [emphasis supplied]

13. The aforesaid pronouncement was adverted to in the case of **<u>Premkumari and Others Vs. Pralhad Dev and Ors., (2008)3 SCC 193</u>**, wherein it was observed that where the owner after verification satisfied himself that the driver has a valid licence and was driving the vehicle in question competently at the time of accident, there would be no breach of Section 149(2)(a)(ii) and, in that event, the insurer would not be absolved of liability. It is also clear that even in the case that the licence was fake, the insurance company would continue to remain liable unless it proves that the owner was aware or noticed that the licence was fake and still permitted him to drive.

14. In the case of **<u>Pepsu Road Transport Corporation Vs. National Insurance Company, (2013)10 SCC 217</u>**, after adverting to the judgment in the case of **<u>Swaran Singh (Supra)</u>**, the legal position was further expounded in the following words :-

> "10. <u>In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the</u>

> driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."
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> [emphasis supplied]

15. In a recent pronouncement, in the case of **Nirmala Kothari Vs. United India Insurance Co. Ltd., (2020)4 SCC 49**, the aforesaid position is reiterated. The observations in para No.12 are material and hence extracted below :-

> "12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving

> licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable."
>
> [emphasis supplied]

16. In a long line of decisions, the legal position is thus crystallized to the effect that the mere fact that the licence, which the driver holds at the time of the accident, turns out to be fake or invalid by itself is not sufficient to absolve the insurer of its liability. If the driver produces licence, which ex-facie appears genuine, the owner is not expected to embark upon further enquiry to ascertain its authenticity, unless there is a cause to disbelieve the same. The insurer can legitimately avoid its liability only when it is able to prove that the owner/insurer was aware or had notice that the licence was a fake or invalid, and still permitted the driver to drive the vehicle.

17. On the aforesaid touchstone, reverting to the

facts of the case, it becomes abundantly clear that no serious endeavour was made on the part of the appellant-insurer, to establish that the licence, which Mr. Shinde was holding, was a fake or invalid, much less to draw home the point that the owner/insured was aware of the fact that the licence was fake. In fact, no such suggestion was given to respondent No.1-Tulsabai, during the course of cross-examination.

18. In this setting of the matter, the submission on behalf of the appellant-insurer to allow it to lead further evidence to establish the fact that the licence in question was a fake and thus remit the matter back to the tribunal, does not merit acceptance. In the totality of the circumstances, the insurer cannot be absolved of the liability, even if it is assumed that the driver was not holding a valid and effective licence. Thus, there is no justifiable reason to entertain the application to lead additional evidence.

19. Even otherwise also, no case is made out for interference with the impugned judgment and award. The Tribunal has reckoned the notional income @ Rs.4000/- per month. The quantum of compensation assessed by the Tribunal is on a conservative basis.

20. The upshot of aforesaid consideration is that the appeal as well as the application seeking permission to lead additional evidence deserve to be dismissed.

21. Hence, following order :-

The appeal stands dismissed with costs.

Civil Application No.10603 of 2015 also stands dismissed.

In view of dismissal of appeal, Civil Application No.10602 of 2015 does not survive and accordingly stands dismissed.

Decree be drawn accordingly.

[N.J.JAMADAR,J.]