

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

35 FIRST APPEAL NO.448 OF 2013
WITH
CA/553/2011 IN FA/448/2013

UNITED INDIA INSURANCE CO LTD THROUGH ITS DIVISIONAL MANAGER
VERSUS
DWARAKABAI NARAYAN CHANDANE AND ORS

...
Advocate for Appellant : Shri Chapalgaonkar S.G.
Advocate for Respondent Nos. 1 & 2 : Shri S.S. Jangada h/f Shri Sachin
Deshmukh
Advocate for Respondent No. 4 : Shri Naiknavare Ramesh V. (Absent)

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CORAM : M. G. SEWLIKAR, J.

DATE : 08th FEBRUARY, 2021.

PER COURT :

1. Heard Shri Chapalgaonkar, learned counsel for the appellant and Shri Jangada h/f Shri Deshmukh, learned counsel for respondent Nos. 1 and 2.

2. None appears for respondent Nos. 3 and 4.

3. Shri Chapalgaonkar, learned counsel for the appellant submitted that the Tribunal has accepted the defence of the Insurance Company that the driver of the vehicle was not holding effective driving license at the time of accident. He submitted that when the Tribunal has accepted this defence, the Tribunal ought to have exonerated the Insurance Company from the liability to pay compensation. However,

the learned Tribunal fastened the liability on the Insurance Company by observing that the Insurance Company shall pay the amount of compensation first and then recover it from the owner by making application in the same proceedings. He submitted that there was head on collision between two vehicles. However, other vehicle was not made a party and the liability to pay entire amount of compensation is fastened on the appellant Insurance Company.

4. It is settled law that even if the driver was not holding driving license at the time of accident, the Insurance Company can be directed to satisfy the award first and then claim recovery in the same proceeding. Learned Tribunal did not commit any error in passing the impugned award. So far as, the other submissions regarding the non impleadment of other vehicle is concerned the injured can claim compensation from any of the tortfeasors. Therefore, on both the counts appeal cannot succeed. The appeal is, therefore, dismissed with no order as to costs.

5. Civil Application No. 553 of 2011 is disposed of.

(M. G. SEWLIKAR)
JUDGE

mahajansb/