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The New India Assurance Co. LtdAppellant.
V/s
Kashinath Laxman Shivkar and Ors.Respondents

Mrs. Poonam Mittal for the Appellant.
Mr. T. J. Mendon for Respondent Nos. 1 to 4.

DATE: AUGUST 03, 2021

1] This appeal is by the New India Assurance Company Ltd.

2] Respondent Nos. 1 to 4, claiming to be the legal heirs of deceased Raju, initiated proceedings under Section 166 of the Motor Vehicles Act, seeking compensation, as said Raju has expired in accident of Truck No. MH-04/F-4941 which was insured with the Appellant.

3] Tribunal vide impugned judgment/award dated 21/03/2009 having regard to the undisputed fact of death of Raju in vehicular accident referred to above, proceeded to award compensation of

Rs 4 lakhs.

4] Submissions of Mrs. Mittal, learned Counsel for the Appellant/New India Assurance Company Ltd. are, the Appellant has examined Narendra Patil (Witness No.1) at Exhibit-36, who is working as Assistant Manager with the New India Assurance Company Ltd., so also Arvind Sawant (Witness No.2) at Exhibit-43, an employee of R.T.O. Tardeo, Mumbai so as to establish the fact that driver of the offending vehicle which was insured with the Appellant was not holding valid driving license. According to her, Tribunal has failed to appreciate the evidence of both these witnesses in its true perspective. Relying on the deposition of aforesaid two witnesses, she would claim that there has to be an order of pay and recover.

5] While countering the aforesaid submissions, Mr. Mendon, learned Counsel for Respondent Nos. 1 to 4 opposed the prayer and supported the judgment impugned.

6] Considered submissions.

7] On the date of the accident viz. 2nd October, 2003, deceased Raju was waiting for a bus when he was admittedly knocked down by the offending vehicle. At that time, deceased was 24 years old, employed in the capacity of Manager (spare parts) in Mauli Motor Garage and was drawing salary of Rs 4,500/- per month. Apart from above, it is claimed that he was the State Champion in Kabbadi sport and was getting honorarium of Rs 3,000/- per month for the same in the capacity of Umpire, so also he was a qualified referee.

8] The vehicle owner, though was served, remained absent, as such was proceeded ex parte.

9] The Appellant in their Written Statement has not pressed the issue about not holding of valid driving license by the driver of the offending vehicle. However it is claimed that driving license which is placed on record by the Respondents/Claimants is an extract of duplicate license taken from the record of the police authorities. On verification, the said license was found to be a bogus document.

10] As far as aforesaid piece of evidence is concerned, I have, with

the assistance of respective Counsel, perused the evidence of both the witnesses.

11] The witness of the Appellant-Company has stated that driver of the offending vehicle was not holding a valid driving license. A copy of the duplicate driving license produced by the claimants on record on verification from the RTO Office was found to be bogus one as driving license No.89/14932/Bom.C. was issued in the name of Nirav Yogendra Mehta, permitting driving of two wheeler and not four wheeler, particularly commercial vehicle. Exhibit-38 is the certificate issued by RTO authorities to that effect. Mr. Arvind Sawant, Witness No.2 examined by the Appellant, has produced on record a true copy of the license holder card at Exhibit-44. According to him, license which is produced on record was issued in the name of Nirav Yogendra Mehta and was not for the purpose of driving a commercial vehicle.

12] In cross-examination, said Witness No.2 has admitted that there are three RTO business offices in Mumbai and he has not verified the said license number and its details at other two RTO Offices.

13] In the aforesaid backdrop, claim put-forth by the Appellant that they have established by cogent evidence that driver of the offending vehicle was not holding valid driving license and as such court should infer breach of policy conditions cannot be accepted. Appellant has failed to bring on record enough evidence to demonstrate that copy of the driving license produced on record was not issued by the RTO authorities for driving commercial vehicle. Hence, the claim put-forth by the Appellant is not sustainable as regards breach of policy conditions.

14] Tribunal thereafter proceeded to consider the age of the deceased Raju on the date of accident, evidence of Witness No.1 of the Claimants i.e. father of deceased Raju who has established the case through documents FIR (Exhibit-25), Report (Exhibit-26), Inquest Panchanama (Exhibit-27), Advance Death Certificate (Exhibit-30) and Spot Panchanama (Exhibit-31).

15] In addition to above, said Witness No.1 of the claimants has brought on record the School Leaving Certificate of deceased Raju at

Exhibit-29 so as to establish his death of birth as 16th December 1979 and the Salary Certificate issued by his employer in all five in number at Exhibit-32 collectively, which voluminously speaks of his monthly income. As such, court proceeded to consider average monthly income of deceased Raju to be Rs 4,000/- per month and proceeded to award compensation.

16] In the wake of above, I hardly see any legal infirmity in the judgment impugned which warrants interference. Appeal as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)