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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.748 OF 2013**

ICICI Lombard General Insurance
Company Limited

....Appellant

V/s

Bhadalya Jatrya Sawara and Anr.

.....Respondents

Mr. Nikhil Mehta i/b KMC Legal Venture for the Appellant.

Ms. Jeeni Antony i/b Mrs. R. Kundu for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 26, 2021

P.C.:-

1] By consent, appeal is taken up for final disposal at this stage.

2] This is an appeal by Respondent No.2-Insurance Company in Claim Petition No. 240 of 2009 decided by Claim Tribunal on 25/6/2012, thereby awarding following compensation:-

“O R D E R

1] The petition is allowed partly with proportionate costs.

2] The respondent No.1 and 2 are jointly and severally directed to pay sum of Rs 1,76,495/- to the petitioner including N.F.L. amount.

3] The respondent No.1 and 2 are further jointly and severally directed to pay interest on the above amount at the rate of 6% p.a. from the date of petition till its actual realization.

4] Award be drawn accordingly.”

3] Mr. Mehta, learned Counsel appearing for the Appellant-Insurance Company would invite attention of this Court to the driving license-Exhibit-60, so as to claim that in absence of holding of valid and effective driving license at the time of accident, breach of policy conditions can be inferred. According to him, driving license-Exhibit-60 was in the name of one Amarprit Kuljitsingh, resident of Sion, Mumbai which was issued for driving two wheeler and not the insured vehicle.

4] If we appreciate the said contention in the light of observations made in para 22 of the impugned judgment, it can be noticed that perusal of Exhibit-60 does not support the case of Insurance Company. If Insurance Company was of the view that driver was not holding valid driving license, document at Exhibit-67 should have been in the name of driver who is involved in the accident in question.

Rather Exhibit-67 speaks of Altaf Hussain who admittedly was not driving the offending vehicle. In that view of the matter, even if the Appellant has tried to prove the said fact by examining Mr. Narayan Pawar, Senior Clerk in the R.T.O., Tardeo, Mumbai, the evidence on record does not establish the case of the Appellant-Insurance Company to that effect. In that view of the matter, contention of Mr. Mehta that there should have been order of pay and recover cannot be accepted. As such, appeal lacks merit and same stands dismissed.

(NITIN W. SAMBRE, J.)