

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.1353 OF 2008

APPELLANT : New India Assurance Company
(Ori.Res.3) through its General Manager,
TIED, Div.121400, 17-A, Cooperal
Road, Mumbai-31
(On R.A.)

..VERSUS..

RESPONDENTS : **1.** Tukaram Shivappa Lavhare
(Ori. Petitioners) aged about 54 years, Occ.
Agriculturist, R/o Mungla, Tq.
Malegaon, Dist. Washim
(On R.A.)

2. Arjun Sambhaji Manwatkar,
Aged adult, Businessman &
Agriculturist, R/o Shripur Jain, Tq.
Malegaon, Dist. Washim
(On R.A.)

3. Shankar Sakharam Wagh,
Aged adult, Driver,
R/o Shirpur Jain, Tq. Malegaon,
Dist. Washim (On R.A.)

None for Appellant.

CORAM: M. S. SONAK, J.

DATE: 09/12/2021.

ORAL JUDGMENT

None for the Appellant. Normally, such an
appeal would warrant dismissal for non-prosecution.

However, this is an Appeal of the year 2008. The compensation amount awarded to the injured claimant is only Rs. 20000/- for an accident that took place on 14.07.1993. Therefore, reasons are set out for the dismissal.

2. The main contention raised in the Appeal memo is that the driver of the Matador was not having a valid license to drive the Matador and therefore, this constitutes a fundamental breach of the terms of the insurance policy. The learned Tribunal, in this case, has observed that the owner of Matador, had produced evidence that the driver was duly licensed. The burden of establishing any fundamental breach of the terms of the insurance policy lies on the Insurance Company. In this case, the Insurance Company failed to examine any witnesses in support of the plea raised by it. The Tribunal has, therefore, quite correctly rejected this defense of the Insurance Company.

3. Further, in this case, there is nothing on record to indicate that the alleged absence of the specified type of license for driving a Matador was the cause for the accident or that is the alleged absence of license had

some nexus with the accident. In absence of such evidence, the Insurance Company could not have been absolved for the liability to pay the compensation.

4. Having regard to the aforesaid circumstances, this Appeal is liable to be dismissed and is hereby **dismissed**.

5. If any amount that has been deposited by the Insurance Company in this Court and the same is till date, not withdrawn, the claimant will be entitled to withdraw the same together with the interest that might have accrued thereon. The Registry to facilitate the transfer of this amount into the bank account of the Claimant.

(M. S. SONAK, J.)

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