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

FIRST APPEAL NO.107 OF 2019

Appellant (Org. Res.No.4) On R.A. : **National Insurance Company Ltd.,**
Plot No.41, Santaji Co-operative Housing Society,
Nagpur-Buttibori Highway at Buttibori,
Distt. Nagpur – 441108.
Through the Divisional Manager,
Divisional Office at Gopal Plaza,
Deorankar Nagar, Near Samarth High School,
Badnera Road, Amravati, Taq. & Distt. Amravati.
Regional Office, 5th Floor, Fidvi Towers,
Mount Road, Sadar, Nagpur.

-- Versus --

Respondents :

(Org. Petitioner No.1) On R.A.
1] Smt. Durga wd/o Purushottam Gunjekar,
Aged about 29 years, Occ. Household

(Org. Petitioner No.2) On R.A.
2] Ganesh s/o Purushottam Gunjekar,
Aged about 10 years, Occ. Nil.

(Org. Petitioner No.3) On R.A.
3] Kartik s/o Purushottam Gunjekar,
Aged about 8 years, Occ. Nil.

Respondent Nos.2 & 3 being minor,
represented through Respondent No.1 Mother

(Org. Petitioner No.4) On R.A.
4] Sau. Suman w/o Vitthal Gunjekar,
Aged about 57 years,
Occ. Labour Work & Household work.

(Org. Petitioner No.5) On R.A.
5] Vitthal s/o Ramchandra Gunjekar,
Aged about 60 years, Occ. Labour Work.

All above Respondent Nos.1 to 5 are
R/o Ghonsa Road, Subhash Nagar, Ward No.1,
Maregaon, Taq. Maregaon, District Yavatmal.

(Org. Res. No.1) On R.A.
6] Sachin @ Anup s/o Arvind Aaswale,
Aged about 23 years, Occ. Driver,
R/o Pandharkawada (Prisgaon),
Taq. Maregaon, Distt. Yavatmal.
(Driver of Ape Auto MH-29/M-6098)

(Org. Res. No.2) On R.A. **7] Dinesh s/o Mayaramji Pande,**
Aged Not Known, Occ. Owner,
R/o Karanwadi, Taq. Maregaon,
Distt. Yavatmal.
At present R/o Dr. Ambedkar Chowk,
Maregaon, Tq. Maregaon, Distt. Yavatmal
(Present Owner of Ape Auto MH-29/M-6098).

(Org. Res. No.3) On R.A. **8] Shaikh Habib s/o Shaikh Daud,**
Aged Not Known, Occ. Owner,
R/o Maregaon, Tq. Maregaon, Distt. Yavatmal.
(Insured & Past Owner of Ape Auto MH-29/M-6098).

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Shri A.W. Paunikar, Advocate for the Appellant.
Shri V.D. Awchat, Advocate for Respondent Nos.1 to 5.
Shri M.I. Dhatrak, Advocate for Respondent No.7.
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CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 23rd FEBRUARY, 2021.

ORAL JUDGMENT :-

With consent, heard finally at the state of admission.

02] The Appellant-Insurance Company has filed this appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award, dated 20/09/2017 in M.A.C.P. No.34/2013 passed by the Motor Accident Claims Tribunal, Kelapur (hereinafter shall be referred to as the 'Claims Tribunal' for short).

03] Respondent No.1 is the widow, Respondent Nos.2 & 3 are the children and Respondent Nos.4 & 5 are the parents of the deceased-

Purushottam Gunjekar. They filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming that said Purushottam Gunjekar had expired as a result of the injuries sustained in an accident involving Auto-rickshaw No.MH-29/M-6098. Respondent Nos.1 to 5 claimed that the accident was caused solely due to rash and negligent driving of the driver of the offending vehicle. Hence, they claimed compensation of Rs.6,00,000/- from the driver, owner and insurer of the offending vehicle.

04] The Appellant-Insurance Company opposed the claim mainly on the ground that the driver of the offending vehicle was not holding a valid and effective driving licence. The Claims Tribunal, after considering the evidence on record, held that Respondent Nos.1 to 5 are entitled for compensation of Rs.5,42,000/-. The Claims Tribunal also recorded a finding that the Appellant-Insurance Company has failed to prove that the driver of the offending vehicle was not possessing a valid and effective driving licence. The Claims Tribunal held that the Appellant having failed to prove breach of terms and conditions of the policy, cannot be absolved of its liability to indemnify the insured. This finding is under challenge in this appeal.

05] Shri A.W. Paunikar, learned Counsel for the Appellant-Insurance Company states that the Claims Tribunal has not considered the fact. He submits that F.I.R. was lodged against the driver of the offending vehicle for driving the vehicle without holding a valid and effective driving licence. He submits that the driver was not holding a valid and effective driving licence, there was fundamental breach of the terms and conditions of the policy. He, therefore, contends that the Claims Tribunal has erred in fastening liability on the Appellant-Insurance Company.

06] *Per contra*, Shri V.D. Awchat, learned Counsel for Respondent Nos.1 to 5 submits that the Appellant-Insurance Company had not adduced any evidence to prove breach of terms and conditions of the policy and, hence, it cannot avoid its liability of indemnifying the insured.

07] It is well settled that the onus is on the Insurance Company to prove that the insurer had breached the terms and conditions of the policy. In the instant case, the appellant-Insurance Company has not adduced any evidence, but has relied solely on the F.I.R at Exh.33 and Form AA at Exh.35. A perusal of the F.I.R. indicates that the offence was registered against the driver of the offending vehicle for the offences under Sections 279 & 304-A of the Indian Penal Code. He was not charged for committing any offence under Section 3 of the Motor Vehicles Act. Even otherwise, registration of the F.I.R. and filing of the charge-sheet would at the most indicate that the driver was charged for committing a particular offence, but that would not constitute proof of the said offence. In the absence of any evidence to prove that there was breach of terms and conditions of the policy, the appellant-Insurance Company cannot be absolved of its liability of indemnifying the insured. The appeal has no merit and is, accordingly, dismissed.

08] It is seen that Respondent Nos.2 & 3 are the minor children of the deceased. Respondent Nos.1, 4 & 5 have already withdrawn 50% of the compensation deposited by the appellant-Insurance Company, which includes the share of the minor children. Under the circumstances, the balance 50% of compensation shall be invested in the name of Respondent Nos.2 & 3 in equal proportion, in any nationalized bank under fixed deposits initially for a period of six years with further renewal till the date, they attain the age of majority.

09] The appeal stands disposed of with no order as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)

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