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

FIRST APPEAL NO. 206 OF 2015

APPELANT: (ON R.A.) (Orgnl.Resp.No.3) (Insurer of Truck)	The National Insurance Co. Ltd., Chandrapur Branch : THROUGH : Its Regional Office at "Mangalam Arcade" Dharampeth, NAGPUR.

... Versus ...

RESPONDENTS: (ON R.A.) (Orgnl. Claimants)	**1**. Smt. Nilima @ Aarati wd/o Dilip Meshram, Aged about 27 years, Occ. Household,
	2. Master Parekh s/o Dilip Meshram, Aged about 9 years, Occ. Nil,
	3. Master Aush s/o Dilip Meshram, Aged about 6 years, Occ. Nil,
	Respondent 2 and 3 being minor, through their mother R-1.
(Dead Abated) (As per Lower Court's Record)	**4.** Smt. Saibai wd/o Moreshwar Meshram, Aged about 53 years, Occ. Household.
	ALL R/O : Wela, Tah. Pombhurna, Distt. Chandrapur.
(Orgnl. Resp.No.1) (Driver of Truck)	**5.** Shri Santosh s/o Basdeo Rajbhar, Aged about 31 years, Occ. Driver, R/o Kureji, Distt. Balia (U.P.) P.S.Garwar, Now at present Lalpeth Colliery No.3, Near Kataghar, Chandrapur, Tah. and Distt. Chandrapur.
(Orgnl. Resp. No.2) (Owner of Truck)	**6.** M/s S.S.V. Coal Carriers, D.R.C. No.4, Durgapur Road, Chandrapur, Distt. Chandrapur.

Shri A.C. Chaphale, Advocate for the Appellant.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 22nd JANUARY, 2021

ORAL JUDGMENT:-

This appeal questions the legality of the judgment and award dated 4th August, 2014 passed by the Claims Tribunal, Chandrapur in M.A.C.P. No.46/2008. By the impugned judgment and award, the Claims Tribunal allowed the claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short "M.V. Act"), filed by the Respondent Nos.1 and 3, who shall be hereinafter referred to as the Claimants. The Claims Tribunal awarded compensation of Rs.4,14,500/- with interest at the rate of 12% per annum from 26th February, 2008 till the date of its realization, payable jointly and severally by the Appellant - Insurer and the Respondent No.6 – insured.

02] Learned counsel for the Appellant states that the driver of the offending vehicle was not holding a valid and effective driving licence as on the date of the accident and as such the Insurance Company is not liable to indemnify the insured. He further submits that rate of interest at 12% per annum is on higher side. He submits the interest rate exceeds the rate granted by any Nationalized Bank as on the date of the accident.

03] I have perused the records and considered the submissions advanced by learned counsel for the Appellant. The records reveal that one Shri Dilip Meshram had expired as a result of the injuries sustained in an accident involving Truck bearing No.MH-27/A-3801 and Tipper Truck bearing No.MH-34/M-2231. It was the case of the Claimants that the deceased was working as a labourer. It was contended that when they reached near Ashtabhuja Temple, the offending vehicle i.e. Tipper Truck bearing No.MH-34/M-2231, which was driven by Respondent No.5 in a rash and negligent manner collided with Truck bearing No.MH-27/A-3801, by which he was travelling to the work place. Said Dilip Meshram succumbed to the injuries sustained in the accident. The widow, two minor children and the mother of the deceased (Respondent Nos.1 to 4) filed the Claim Petition under Section 166 of the M.V. Act claiming compensation of Rs.6,00,000/-.

04] The driver and the owner of the Tipper Truck (Respondent Nos.1 and 2) did not contest the proceeding despite due service. The Appellant - Insurance Company resisted the claim mainly on the ground that the driver of the offending vehicle was holding a licence for a light motor vehicle. He was not authorised to drive a Tipper Truck which is a heavy goods vehicle. It was alleged that the owner of the offending vehicle had allowed an unauthorised person to drive the vehicle. Hence, he committed breach of terms and conditions of the policy and as a result thereof, the Insurance Company is not liable to indemnify the insured.

05] The Claims Tribunal after considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the Tipper Truck. The Tribunal rejected the defence raised by the Insurance Company and directed the Driver, Owner and the Appellant – Insurance Company to pay to the Claimants jointly and severally a total compensation of Rs.4,14,500/- with interest at the rate of 12% per annum. The challenge in this appeal is restricted to rejection of the defence regarding absolving the Company from its liability of indemnifying the insured and the rate of interest awarded by the Trial Court. It is, therefore, not necessary to dilate on the other factual aspects. The only question for consideration is whether the Tribunal was justified in rejecting the defence raised by the Insurance Company and thus holding it liable to indemnify the insured and secondly whether the rate of interest is higher than that granted by Nationalized Bank.

06] The Insurance Company has sought to absolve its liability mainly on the ground that the driver was not holding a valid and effective driving licence. On the issue of validity of the licence, the Tribunal has observed thus:-

“21. In the present petition, it is the contention of respondent no.3 that the driver of respondent no.2 was not holding a valid driving licence. The evidence of witness no.1 for respondent no.3, namely, Anil shows that he has no knowledge about the accident and on the basis of police papers he testified before the Tribunal. The contentions made in the written statement shows that the respondent no.3 had started investigation in the said accident, but surprisingly no any investigation report came to be filed. The evidence of Anil is also silent that any investigation was conducted on behalf of respondent no.3 to ascertain whether driver of respondent no.2 was holding any driving licence and what was the category of the said driving licence. Exh.No.37 is the xerox copy of driving licence submitted on behalf of the petitioners. It shows that two category has been scored and category of Light Motor Vehicle is marked and category heavy passenger motor vehicle is left unmarked and it is mentioned that Light Motor Vehicle transport only. Firstly, the validity of licence is shown as 21.06.2025. It is scored and shown as 28.09.2009. Exh.No.37 did not disclose clearly about category of driving licence held by respondent no.1. Since beginning the petitioners have joined as party to the driver and owner of the vehicle. The respondent no.3 had seven years time to get if confirmed that respondent no.1 was holding a driving licence and what was its category and validity. The respondent no.3 had ample machinery to investigate the matter and bring the truth before the Tribunal, but respondent no.3 kept mum for a long period and raised plea that the driver of respondent no.2 was not holding a valid driving licence. It is nevertheless to mention here that it is the responsibility of insurance company to plead and prove by cogent and reliable evidence that the owner of vehicle committed breach of terms and conditions of insurance policy. Exh.No.46, copy of insurance policy, shows that vehicle owned by respondent no.2 was insured from 06.11.2006 to 05.11.2007. It means at the time of accident dated 31.05.2007, the vehicle was insured with the respondent no.3. Therefore, respondent no.3 is liable to indemnify the respondent no.2.”

07] It is not is dispute that the driver of the offending vehicle was chargesheeted only for offences under Section 279, 304 and 184 of the Indian Penal Code. He was not chargesheeted under Section 3 of M.V Act for driving the vehicle without holding a valid driving licence. It is also pertinent to note that in the written statement filed by the Appellant – Insurance Company, there was no specific averment of breach of terms and conditions of the policy by allowing an unauthorised person to drive the vehicle. The Appellant – Insurance Company had vaguely stated that the matter regarding validity of the licence was under investigation. In the cross-examination, witness Anil Raghunath Rushi - Administrative Officer of the Appellant – Insurance Company has deposed that the licence at Exh.37 was for driving light motor vehicle. His deposition is based only on the copy of the licence produced before the Court and in his cross-examination, he has admitted that he had not inquired from the R.T.O. Officer, Balia about validity of the driving licence of respondent No.1 The said statement itself is sufficient to hold that the Insurance Company had not been able to prove that the driver was not holding a valid and effective driving licence. Having failed to prove that the insurer was guilty of negligence and or that he had failed to exercise reasonable care in the matter of fulfilling the conditions of the policy, the Appellant – Insurance Company cannot be absolved of its liability of indemnifying the insured. In the facts of the case, the decision in ***Pappu & Others Vs. Vinod Kumar Lamba & Another*** reported in ***(2018) 3 SCC 208*** is not applicable.

08] As regards the rate of interest, it is seen that the Claims Tribunal has awarded compensation at the rate of 12% per annum. The interest is normally granted taking into consideration the rate granted by the Nationalized Bank. The interest awarded by the Tribunal appears to be on higher side and hence, the same is reduced to 9% per annum. For the reasons stated above, the award is modified to the extent by reducing the rate of interest. Hence, the following order:-

ORDER

1. The appeal is partly allowed.

2. The impugned judgment and award dated 4th August, 2014 passed by the Claims Tribunal, Chandrapur in M.A.C.P. No.46/2008 is modified to the extent of reducing the rate of interest from 12% to 9%.

3. Respondent Nos.1 to 4 are entitled for compensation of Rs.4,14,500/- at the rate of 9% per annum from the date of the petition till the date of payment/deposit in the same proportion as stated in Para 23(4) of the impugned

judgment.

4. The balance amount be refunded to the Appellant – Insurance Company.

(SMT. ANUJA PRABHUDESSAI, J.)

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