IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO.123 OF 1995

M/s New India Assurance Co.Ltd,
(A subsidiary of General Insurance
Corporation of India) having its Regd.
& Head Office at New India Assurance
Building 87, M.G. Road Bombay 400001
Branch at Abhot Building Zendigate
Ahmednagar Through its duly constituted
attorney :
Shri Sayed Khaleel Sayed Chand .... APPELLANT

VERSUS

1. Fakri Mohamad Pathan,
Age : 45 years, Occu.: Mason.

2. Baby Fakri Mohamad Pathan,
Age : 40 years, Occu.: Household

Both R/o.: Gondhevani, in front of
Church, Tal. Shrirampur,
District : Ahmednagar

3. Patilaba Sakharam Labade,
Age : Major, Occu.: Agril.,
R/o.: In the Mala of Mavalsi
At Post Gondhavani, Tq. Shrirampur,
District : Ahmednagar

4. Kindalik Kisan Sable,
Age : Major, Occu.: Driver,
R/o.: Bhokar, Tq. Shrirampur,
District : Ahmednagar ... RESPONDENTS

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Advocate for Appellant : Mr. V. N. Upadhye
Advocate for Respondent No.3 : Mr. S. B. Dhongade
Advocate for Respondent No.4 : Mr. Kunal A. Kale

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 11/08/2022
PRONOUNCED ON : 20/08/2022

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JUDGMENT :

1. The appellant i.e. original respondent No.3 has preferred this appeal against the judgment and award dated 30/11/1994 in MACP No. 45 of 1988 passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred to as 'learned Tribunal') on the sole ground that the Insurance Company be exonerated as the driver of offending tractor and trolley was not possessing valid driving license at the relevant time.

2. The facts leading to this appeal are as under :

One Rashid, aged about 13 years, who was studying in 7th standard, died in the accident on 24/01/1988 due to dash of offending tractor and trolley bearing registration Nos. MAE 7706 and MWA 6793 respectively. The present respondent Nos.1 and 2 are the parents of deceased Rashid. The offence in respect of the aforesaid accident, was registered against respondent No.4 Kundlik Sable, who was the driver at the relevant time. Further, respondent No.3 in the instant appeal, was owner of the offending tractor and trolley. It is not disputed that the tractor and trolley were insured with the present appellant i.e. original respondent No.3 - Insurance Company covering the date of accident.

3. The learned counsel for the appellant- Insurance Company at the time of passing order in Civil Application No. 16748 of 2009 for restoration of the appeal, had submitted that the impugned award

has been challenged only on the ground that respondent No.4 driver of the offending vehicles was not possessing valid driving license. In view of the submission, no record and proceedings were called. The learned counsel for the appellant - Insurance Company had also submitted that the appeal after its restoration be decided on its own merit.

4. Considering the ground of challenge, I have gone through the impugned judgment. Admittedly, the offending vehicles were insured with the appellant- Insurance Company on the date of accident. Moreover, negligence of respondent No.4 - driver was also established on the basis of documents on record, such as, FIR, spot panchanama etc. It is extremely important to note that the present appeal is preferred by the appellant-Insurance Company only on the ground that since the driver of the offending vehicles, was not possessing valid driving license, no liability could have been cast upon it by the learned Tribunal. It is revealed from the judgment itself that the appellant - Insurance Company has raised the said ground before the learned Tribunal also. On going through the findings in respect of this aspect, it appears that the learned Tribunal has dealt with this issue and found that the appellant - Insurance Company could have discharged the onus of proving fact that the tractor and trolley driver was not having valid driving license. It appears that the appellant - Insurance Company before the learned Tribunal had tried to call necessary documents from RTO Office in order to show that the tractor driver had no valid driving license. However, despite such attempts, the appellant - Insurance Company ultimately could not produce such documents through the appropriate office of RTO, Shrirampur.

The appellant - Insurance Company claimed that the said RTO Officer had in fact refused to accept the summons for production of such documents. However, mere fact that the said witness refused to accept the summons, does not absolve the appellant - Insurance Company for taking further steps.

5. It is a general rule that the burden of proving a fact rests upon the party who asserts it. In the instant case, the appellant - Insurance Company has not discharged such burden. Under such circumstances, the appellant - Insurance Company cannot be exonerated from the liability of paying the compensation merely because the driver and the owner of the offending vehicles could not produce the driving license. It was incumbent upon the appellant - Insurance Company itself to show by trustworthy documents that respondent No.4 driver was not having valid driving license. Under such circumstances, I am of the opinion that the learned Tribunal has rightly held that the driver and the appellant - Insurance Company are jointly and severally liable to pay compensation to respondent Nos.1 & 2 - claimants. It is to be noted here that though the original claimants had asked for compensation to the tune of Rs.1,50,000/-, but the learned Tribunal has awarded only Rs.20,000/- as a compensation and the said amount along with interest is also deposited before the learned Tribunal by the appellant - Insurance Company. In view of the same, I find no merit in the appeal and the same is accordingly dismissed with costs.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-