

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 431 OF 2014

The Oriental Insurance Co. Ltd.
Divisional Office, Aurangabad
Through its Divisional Manager,
Aurangabad.

.. **APPELLANT**
(Orig.R.No. 3)

VERSUS

- 1] Parwatibai w/o. Radhakishan Hajare,
Age 43 years, Occu : Household,
R/o. Babada, Tq. Mantha,
District Jalna.
- 2] Vilas s/o. Radhakishan Hajare,
Age 24 years, Occu : Student,
R/o. as above.
- 3] Navnath s/o. Pandurang Doiphode,
Age 25 years, Occu : Driver,
R/o. Bramhangaon, Tq. Selu,
Dist. Parbhani
- 4] Pandurang s/o. Lahanuappa Doiphode,
[Died on 01/05/2021]
Through L.Rs.
- 4/A. Vimalbai w/o. Pandurang Doiphode,
Age 47 Yrs. Occu. Household,
R/o. Bramhangaon, Tq. Selu,
Dist. Parbhani.
- 4/B. Sow. Renuka w/o. Tatyabhau Mule,
Age 35 yrs. Occu. Household,
R/o. RX 6/4/2, Swami Samarth Housing Society,
Bajaj Nagar, Wadgaon, Kolhati,
Aurangabad.

.. **RESPONDENTS**

...

Mr.A.G.Kanade, Advocate for the appellant.

Mrs. Pratibha Bharad, Advocate for respondent nos.1 and 2

Mr.V.M.Mane, Advocate for respondent nos.3 and 4.

...

WITH
CROSS OBJECTION NO.71 OF 2021
IN FIRST APPEAL NO.431 OF 2014

- 1] Navnath s/o. Pandurang Doiphode,
 Age 28 yrs, Occu. Driver,
 R/o. Bramhangaon, Tq. Selu,
 Dist. Parbhani.
- 2] Pandurang s/o. Lahanuappa Doiphode
 Died through L.Rs.
- 2/A. Vimalbai w/o. Pandurang Doiphode,
 Age 47, Occu. Household,
 R/o. Bramhangaon, Tq.Selu,
 Dist. Parbhani.
- 2/B. Sow. Renuka w/o. Tatyabhau Mule,
 Age 35 Yrs. Occu. Household,
 R/o. RX 6/4/2, Swami Samarth
 Housing Society, Bajaj Nagar, Wadgaon
 Kolhati, Aurangabad.
- 2/C. Navnath s/o. Pandurang Doiphode,
 [Already on record as pet.No.1].

CROSS OBJECTIONERS

[Orig.Resp.No.1 and 2]

VERSUS

- 1] The Oriental Insurance Co. Ltd.
 Divisional Office, Aurangabad
 Through its Divisional Manager,
 Aurangabad.

2] Parwatibai w/o. Radhakishan Hajare,
Age 46 yrs., Occu. Household,
R/o. Barbada, Tq. Mantha,
Dist. Jalna.

3] Vilas s/o. Radhakishan Hajare,
Age 27 yrs, Occu. Agri.
R/o. as above.

NON-APPELLANTS

...
Mr.V.M.Maney, Advocate for the cross-objectioners
Mr.A.G.Kanade, Advocate for the respondents.
...

CORAM : S.G.DIGE, J.
DATE : 19.10.2022

ORAL JUDGMENT :

1] Being aggrieved and dissatisfied with judgment and award passed by the Member, Motor Accident Claims Tribunal, Jalna [for short 'the Tribunal], the appellant – insurance company - original respondent no.3 preferred this appeal, cross objection is also filed by original respondent nos.1 and 2 i.e. driver and owner of the offending tractor. I am deciding the appeal and cross objection by common judgment.

2] It is the contention of the learned counsel for the appellant that on 9th June, 2010, the deceased Radhakishan was travelling on motorcycle as a pillion rider from Moregaon to Selu. At that time, tractor coming from opposite direction gave dash to the motorcycle in which he sustained severe injuries and died on the spot. The offence was registered against the driver of the tractor i.e. respondent no.3. The learned counsel further submits that at the time of accident, respondent no.3 was not holding valid and effective driving license, it amounts to breach of policy condition. But this fact was not considered by the Tribunal and directed the Insurance Company to pay the compensation to the claimants and recover it from respondent nos.3 and 4 [driver and owner of offending vehicle], hence, requested to allow the appeal.

3] It is the contention of the learned counsel for respondent nos.3 and 4 that at the time of accident, respondent no.3 - driver of tractor was holding LMV license. The said license was valid till 2011 and accident was occurred in 2010. But this fact is not considered by the

Tribunal, hence, requested to allow the cross objection. He relied on the judgment in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** reported in 2017 SCC OnLine 788.

4] I have heard all learned counsel. Perused the judgment and award passed by the Tribunal. The issue involved in this appeal and cross objection is whether at the time of accident, the driver of the tractor was holding valid and effective driving license. The Tribunal has observed that the driving license of respondent no.1 is at Exhibit-37. It was issued on 12th November, 2007. As per this driving license, respondent no.1 [respondent no.3 herein] was holding driving license to drive motorcycle with gear and tractor only. When the tractor is accompanied with trolley, it would not be mere light motor vehicle [LMV] but it would be goods tractor and therefore, a transport vehicle, a license Exh.37 could not be said to be valid. In my view, the issue of holding LMV license of vehicle is no more res integra. The Hon'ble Apex Court in the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited** [supra]

has held that licence to drive the light motor vehicle includes licence to drive transport vehicle. Hence, I do not agree with the contention of the learned counsel for the appellant Insurance Company that at the time of accident, the driver of the tractor trolley was not holding proper driving licence.

5] In view of the above, I pass the following order:-

ORDER

- i] Appeal is dismissed.
- ii] Cross objection is allowed.
- iii] Respondent – Insurance Company shall satisfy the award passed by the Tribunal.
- iv] The original claimants are permitted to withdraw the amount along with accrued interest.
- v] Appeal and Cross objections are accordingly disposed of.

**[S.G.DIGE]
JUDGE**