IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 259 OF 2003

The Branch Manager, through
the Divisional Manager,
New India Insurance Co. Ltd.,
Aurangabad Division, Aurangabad. Appellant

Versus

01 Kausalyabai w/o Murlidhar Bhamare,
age: 48 years, Occ: Household;

02 Nakul Murlidhar Bhamare,
age: 34 years, Occ: Business;

03 Rupali Murlidhar Bhamare,
age: 19 years, Occ: Education;

04 Chetana Murlidhar Bhamare,
age: 17 years, Occ: Education;

All residing at Afugalli, Chalisgaon,
Tq. Chalisgaon, District Jalgaon. Orig. Claimants

05 Mohanlal Ramanlal Madane,
age: 46 years, Occ: Business,
R/o Ghatroad, Chalisgaon,
Tq. Chalisgaon, District Jalgaon. Respondents

Mr. S. G. Chapalgaonkar, advocate for the Appellant.
Mr. Y. R. Neb, advocate holding for Mr. A. B. Kale, advocate for Respondents No.1 to 4.
Mr. P. R. Patil, advocate for Respondent No.5.

CORAM : SANDIPKUMAR C. MORE, J.

Reserved on : 30th August, 2022.
Pronounced on : 30th September, 2022.

JUDGMENT :

1 The appellant-Insurance Company, who is original Respondent No.2 in M. A. C. P. No. 452 of 1997, has challenged the judgment and award dated 05.07.2002, passed by the Motor Accident Claims Tribunal, Jalgaon (herein after referred to as "the learned Tribunal") in the aforesaid Claim Petition, only on the ground that the learned Tribunal has wrongly fastened the liability of paying the compensation upon the Insurance Company by holding that the Insurance Company has failed to establish the fact that the driver of the offending vehicle was not possessing valid driving licence at the time of accident. The Insurance Company, however, has not challenged the assessment done by the learned Tribunal in respect of the compensation.

2 It is not disputed that on 13.01.1997, one Murlidhar Atmaram Bhamare was travelling in a Rickshaw bearing Registration No. MH-19-J-0037 on Nandgaon to Aurangabad road, which was being driven by Gopal Mohanlal

Madane. Since it was driven in rash and negligent manner, it turned turtle and Murlidhar received severe injuries and succumbed to the same. It is also not in dispute that at the time of said accident, the aforesaid rickshaw was validly insured with the appellant-Insurance Company.

3 It is already stated herein above that the computation part is not at all challenged by the Insurance Company, but only liability to pay the compensation is under challenge.

4 With the assistance of learned Counsel for respective parties, I have gone through the impugned judgment and award & also Record and Proceedings of the aforesaid Claim Petition.

5 The learned Counsel for the appellant-Insurance Company submits that wrong inference has been drawn by the learned Tribunal that the Insurance Company is jointly and severally liable for paying the compensation to the

original claimants, i.e. Respondents No.1 to 4. He further submits that though the Insurance Company, in its written statement before the learned Tribunal, had raised a defence that the driver of the offending rickshaw was not possessing valid driving licence at the time of accident, but the burden to establish such fact was never upon the Insurance Company but it was on the owner of the said Rickshaw, who is present Respondent No.5 and he failed to discharge the same. The learned Counsel for the appellant-Insurance Company heavily relied upon the following judgments:

01 **In the case of National Insurance Company Limited Vs. Brij Pal Singh & another**, 2004 STPL 98 Allahabad; and

02 In the case of **Pappu and others Vs. Vinod Kumar Lamba and another**, 2018 STPL 1202 SC.

6 On the contrary, learned Counsel for respective respondents, supported the impugned judgment and award and prayed for dismissal of the appeal.

7 Following two main issues are involved in the present appeal:

> (i) Whether in the event when the driver of the offending vehicle does not possess valid driving licence at the time of accident, can the liability to pay compensation be fastened on the Insurance Company; and
>
> (ii) Upon whom the burden lies to prove the fact that the driver of the offending vehicle was not holding valid driving licence at the time of accident.

8 In the judgment in the case of **Brij Pal Singh** (*supra*), the Division Bench of Allahahabad High Court, has made following observations:

> "21 The principle discussed above would be fully applicable here and the burden of proof that the driver of the truck had a valid and effective driving licence would be entirely upon the owner of the truck. The said burden can never be shifted to the Insurance Company as it cannot be asked to discharge a negative burden with regard to a fact which is especially within

the knowledge of the driver who is an employee of the owner of the vehicle."

9 So also, in the case of **Pappu & others** (*supra*), the Hon'ble Apex Court has made following observations:

> "13 In the present case, the respondent No.1 owner of the offending vehicle merely raised a vague plea in the Written Statement that the offending vehicle DIL-5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, the respondent No.1 did not enter the witness box or examine any witness in support of this plea. The respondent No.2 Insurance Company in the Written Statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. The respondent No.1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring the respondent No.2 Insurance

> Company to rebut such evidence and to produce other evidence to substantiate its defence. Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The Insurance Company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle -that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the Written Statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The Insurance Company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle.”

10 On going through the aforesaid observations, it is sufficiently made clear that the burden of establishing the

fact that the offending vehicle was being driven by a person holding valid driving licence is on the owner of the vehicle and the liability of paying the compensation can only be fastened upon the Insurance Company after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by the authorised person holding valid driving licence at the time of accident. Thus, it is clearly evident that such burden is upon the owner of the offending vehicle and the Insurance Company cannot be held answerable for not proving the same. Further, the Hon'ble Apex Court, in the judgment in the case of **Pappu & others** (*supra*), has also held that if the owner fails to prove the fact that the driver of the offending vehicle was having valid driving licence, but at the same time, the vehicle was covered under the Insurance Policy, then to sub-serve the ends of justice, the Insurer can be asked to satisfy the award with liberty to recover the same from the owner of the offending vehicle, in accordance with law.

11 In the instant case, though owner of the offending vehicle i.e. present Respondent No.5 had appeared before the learned Tribunal, but failed to file written statement. Moreover, it has also come in the evidence of witness no.2 – Prakash Girdhar Thakur, who was the officer of the appellant – Insurance Company that after the accident, a notice, as per Exhibit-71, was issued to Respondent No.5 – owner of the offending vehicle i.e. Mini door rickshaw, whereby he was called upon to produce the original policy. It was already intimated to the owner under the said notice that the Insurance Company was not liable to pay compensation in case the driver of the offending vehicle was not holding valid driving licence at the time of accident. The owner of the offending vehicle, despite receipt of such notice, failed to provide any substantial document to show that the driver, at the relevant time, was possessing valid driving licence. There is no evidence forthcoming from Respondent No.5 – owner to discharge the burden of proving that the driver of the offending vehicle was holding valid driving licence at the time of accident. Since Respondent No.5 – owner has not filed any

written statement despite appearance, no such facts are pleaded by him, as required under the aforesaid observations of the Hon’ble Apex Court.

12 Thus, considering all these aspects, an inference has to be drawn that the driver of the offending vehicle was not possessing valid driving licence at the time of accident and, therefore, though the Insurance Company can be asked to satisfy the award, but it is also entitled to seek relief for recovery of award amount from Respondent NO.5 – owner of the offending vehicle.

13 It is significant to note that the appellant-Insurance Company appears to have deposited the entire amount of compensation under the impugned award, including the award under Section 140 of the Motor Vehicles Act, 1988, under the principle “no fault liability”. As such, the appellant – Insurance Company is entitled to recover the same from Respondent No.5 – owner of the offending vehicle.

14 In the result, the appeal is partly allowed & liberty is granted to the appellant-Insurance Company to recover the amount of compensation including the amount under no fault liability from Respondent No.5 -owner of offending vehicle. If there is any balance amount of compensation in this Court, then it be paid to Respondents No. 1 to 4 in equal proportion along with the proportional interest accrued thereon till date.

15 Appeal is accordingly disposed of in above terms.

Pending Civil Applications, if any, do not survive and stand disposed of accordingly.

(SANDIPKUMAR C. MORE)
JUDGE

adb