

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

FIRST APPEAL NO.3122 OF 2011

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad

.... PETITIONER

VERSUS

1. Laxmibai w/o Vithal Ingle,
Age : 22 years, Occu.: Household,
R/o.: Soigaon Devi, Tal. Bhokardan,
District Jalna
2. Prachi d/o Vithal Ingle,
Age : 3 years, Occu.: Nil,
Minor U/g of respondent No.1 Laxmibai
3. Rahul s/o Suresh Ingle,
Age : 20 years, Occu.: Education,
R/o.: As above
4. Chandrakala w/o Suresh Ingle,
Age : 42 years, Occu.: Household,
R/o.: As above.
5. Jaibai w/o Sampat Ingle,
Age ; 92 years, Occu.: Nil,
R/o.: As above
6. Arun s/o Wamanrao Bhagile,
Age : 52 years, Occu.: Business,
R/o.: Takarkheda, Post Deolgaon Mahi,
Taluka Deolgaon-Raja,
District Buldhana
7. Suresh s/o Shesherao Bhutekar,
Age ; 25 years, Occu.: Driver,
R/o.: Aland, Tal.: Deolgaon-Raja,
District : Buldhana

... RESPONDENTS

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Advocate for Appellant : Mr. Mr. S. G. Chapalgaonkar
Advocate for Respondent Nos.3 to 5 : Mr. R. J. Nirmal
Advocate for Respondent No.6 : Mr. S. T. Veer
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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 29/07/2022
PRONOUNCED ON : 03/08/2022
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JUDGMENT :

1. Being aggrieved by the judgment and order dated 24/11/2010 passed by the learned Motor Accident Claims Tribunal, Jalna in MACP No. 166 of 2008, the appellant - Insurance Company, who is original respondent No.3 in the claim petition has preferred this appeal on limited aspect by challenging the part of operative order. The appellant- Insurance Company and original respondent Nos.1 and 2, who are the owner and driver of the offending vehicle, are held jointly and severally liable to pay the awarded compensation of Rs.7,00,000/- along with interest @ 7.5 p.a. from the date of claim petition, till realization of the entire amount. The appellant- Insurance Company is granted liberty to recover the award amount with interest from respondent Nos.1 & 2.

2. Heard rival submissions and also perused the impugned judgment.

3. Admittedly, the appellant - Insurance Company has not challenged the quantum of compensation awarded by the learned Tribunal. However, it disputed the direction of holding the Insurance Company liable for the payment of compensation to the

original claimants and to recover same later on from the present respondent Nos.6 & 7, who are the owner and driver of the offending vehicle respectively.

4. The learned counsel for the appellant - Insurance Company strenuously argued that there was fundamental breach of policy condition as the driver of Tempo i.e. respondent No.7 was not having valid driving license for driving the vehicle involved in the accident and still the learned Tribunal has asked the appellant - Insurance Company to satisfy the award and then to recover.

5. On perusal of the impugned judgment, the learned Tribunal in para 23 has held thus :

"23. Here in this case respondent No.2 has admitted in his cross-examination that he was not having effective driving license to drive a transport vehicle. Undisputedly, the vehicle Tata 407 involved in the accident is a goods carriage vehicle falls under the category of transport vehicle. Driving license has to be duly endorsed u/s 3 of the Act. If it is not so done, a person holding driving license to ply LMV cannot ply transport vehicle. The respondent No.1 / owner of Tata 407 has also admitted in his cross examination that before employing respondent No.2 as a driver to drive the vehicle Tata 407 he has verified driving license. Under these circumstances, the breach of the conditions of

the insurance is therefore apparent on the fact of the record."

6. However, the learned Tribunal despite such finding, has fastened the liability of compensation upon the appellant - Insurance Company even it was not liable for paying such payment. Thus, the question involved in the instant matter is that whether the learned Tribunal is justified in putting the burden of the award on the appellant- Insurance Company, which in fact not at all liable for the same in view of Section 149(2) of the Motor Vehicles Act, 1988.

7. Admittedly, respondent No.6 - driver was not having valid driving license at the time of accident and therefore, there was a fundamental breach of policy condition, which exonerates the appellant - Insurance Company. However, in respect of the controversy involved in this matter there were divergent views taken earlier. However, in case of ***National Insurance Company Limited Vs. Parvathneni and another, (2000) 8 SCC 785***, the same question arose before the Hon'ble Apex Court and it was referred to the Hon'ble the Chief Justice of India for constituting a larger bench to decide the same, which includes following questions :

"7.

(1) If an insurance company can prove that it does not have any liability to pay amount in law to the claimants under the Motor Vehicles Act or any other enactment, can the court yet compel it to pay the amount in question giving

it liberty to later on recover the same from the owner of the vehicle ?

(2) Can such a direction be given under Article 142 of the Constitution, and what is the scope of Article 142 ? Does Article 142 permit the Court to create a liability where there is none ?"

8. However, the aforesaid questions could not be decided since the further proceedings were dropped. Under such circumstances, the core question involved in the present matter remained undecided.

9. Even otherwise also the learned Tribunal has permitted to the appellant - Insurance Company to recover the amount of compensation, which is admittedly paid by it from respondent Nos.6 and 7, namely owner and driver of the offending vehicle i.e. Tempo TATA-407 bearing No. MH-28-H-6222. Therefore, considering all these things, I find no merit in the appeal and the same is hereby dismissed with no order as to costs.

(SANDIPKUMAR C. MORE, J.)