

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

920 FIRST APPEAL NO.952 OF 2010

**THE ORIENTAL INSURANCE CO LTD
VERSUS
BHAUSAHEB KASHINATH MATE AND ORS**

Mr. V. N. Upadhye, Advocate for the appellant
Mr. P. P. Patil, Advocate h/f Mr. P. F. Patni,
Advocate for the respondent Nos. 1 to 4

CORAM : S. G. DIGE, J.

DATE : 02nd August, 2022

P. C.

1. Being aggrieved and dissatisfied by the judgment and award dated 30-12-2009 passed by the Motor Accident Claim Tribunal, Aurangabad in MACP No.482/2007, the appellant-original respondent No.3-insurance company has preferred the present appeal.

2. Brief facts of the case, are as follows:-

a] On 04-06-2007, the deceased Tarabai Mate and Alkabai Mate were walking on the Jalna-Aurangabad road at that time one truck bearing No.AP-25-U-6777 gave dash to both of them. The police recorded the statements of witnesses and registered the crime against the truck driver. On account of said accident, the deceased sustained fatal injuries.

b] The claimants-respondent Nos.1 to 4 who are legal representatives of the deceased filed claim petition before the Motor Accident Claim Tribunal (for short 'the tribunal') for getting compensation of Rs.5 lakhs from the driver, owner and insurer of the offending truck. The owner and driver of the truck did not appear before the tribunal. Hence, the matter proceeded ex-parte against them.

c] After considering the evidence led before

the tribunal and hearing all the parties, the tribunal has awarded Rs. 3,34,000/- compensation alongwith interest. Said judgment and order is under challenge.

3. It is the contention of learned counsel for the appellant that the driver of the truck was under influence of liquor at the time of accident. But, this fact was not considered by the tribunal. As the driver of the truck was driving truck under influence of liquor, the insurer of the vehicle is not liable to pay the compensation in respect of the death of the pedestal. The offence under Section 185 of the Motor Vehicle Act (for short 'the M. V. Act') was registered by the police against driver of truck. It shows driver was under influence of the liquor. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the respondents that the appellant has not adduced any evidence before the tribunal to prove that the driver was under influence of liquor. Hence, the judgment and order passed by the tribunal is legal and valid.

5. I have heard both the learned counsels. Perused the judgment and order passed by the tribunal.

6. The issue involved in this appeal is whether at the time of accident the driver of the truck was under influence of liquor or not. It is the contention of the learned counsel for the respondent that the appellant-original respondent No.3 did not adduce any evidence to prove that the driver of the truck was under influence of liquor. No stand was taken in the

written statement of the appellant filed before the tribunal that there is breach of condition of the policy and the driver of the truck was under the influence of liquor. Perused written statement of appellant Exh. 16 filed before the tribunal. In this written statement appellant has stated that as per police papers the driver of the said vehicle had consumed liquor at the time of accident. It is clear breach of terms and condition.

7. In my view, when appellant was aware that police papers shows driver of the vehicle was under influence of liquor then they should have examined Investigating Officer of the said crime in support of their defense. Moreover, it has not come on record, if driver of offending truck is convicted for offence of consumption of liquor, unless said offence is proved against driver, it cannot be said that he was

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under influence of liquor. If the appellant has taken specific defence that there is a breach of terms of policy, then it is well settled that it has to be proved by evidence. Mere grounds raised in the written statement cannot be considered as evidence.

8. In view of the above, the appeal is devoid of merit and I pass the following order.

ORDER

a] The appeal stands dismissed.

b] No order as to costs.

[S. G. DIGE, J.]

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