

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

**FIRST APPEAL NO.2305 OF 2020**

The New India Assurance Company Ltd.,  
D.O.No.1 Adalat Road, Aurangabad,  
Through its Authorized Signatory  
Shri Avinash s/o. Achyut Bugdani,  
Age: 57 years, Occ-Service,  
R/o: Aurangabad.

**.. APPELLANT**  
[Orig. Resp. No.3]

**VERSUS**

1] Chandrakala Babasaheb Kangare,  
Age: 46 years, Occ : Household,  
R/o. Mukindpur, Nevasa,  
Dist. Ahmednagar,  
At present Belapur,  
Tq. Shrirampur, Dist. Ahmednagar.

2] Gangadhar Ramchandra Korke,  
Age: 50 years, Occ : Agril.,  
R/o. Ranjangaon,  
Tq.Nevasa, Dist. Ahmednagar.

3] Sunil Mahadu Dolse,  
Age: 45 years, Occ : Driver,  
R/o. Ghodegaon,  
Tq. Nevasa, Dist. Ahmednagar.

**.. RESPONDENTS**

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Mr.M.M.Ambhore, Advocate for the appellant  
Mr.Amol S. Gandhi, Advocate for respondent no.1.  
Mr.Adinath B. Jagtap, Advocate for respondent nos.2 and 3

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**CORAM : S.G.DIGE, J.**

**DATE : 28.07.2022**

**PER COURT :-**

1] By consent of both learned counsel, this appeal is heard finally at the stage of admission.

2] Being aggrieved and dissatisfied by the judgment and award passed by the learned Motor Accident Claims Tribunal, Shrirampur [for short 'the Tribunal'], the appellant Insurance Company [Original respondent no.3] has preferred this Appeal.

**Brief facts of the case are as under :**

3] On 27.12.2017 at about 2.00 p.m. on Nagar-Aurangabad Highway deceased Babasaheb was proceeding by walk, near Undre Trading Company Newasa Phata, at the relevant time the tractor bearing No.MH-17-AE-5323 attached with two trolleys bearing No.MH-12-GN-8976 and MH-12-GN-8975, fully loaded by the sugarcane, which were going towards sugar factory by the side of Aurangabad in rash and negligence manner. The said tractor was driven by respondent no.2 i.e. present respondent no.3 and gave dash

to the deceased Babasaheb. Due to said dash, the deceased succumbed injuries and died. The Newasa Police registered a Crime against present respondent no.3 for the offence punishable under Section 279, 304-A of IPC and under Section 134, 177 and 184 of the Motor Vehicle Act [for short 'M.V. Act'].

4]           The respondent no.1 – original claimant filed Claim Petition for compensation against appellant and respondent nos. 2 and 3. Considering the evidence led before the Tribunal and after hearing the parties, the Tribunal has awarded the compensation. Against the said judgment and order, this appeal.

5]           The learned counsel for the appellant submits that the deceased himself jumped before the tractor and died. The evidence in that regard was given before the Tribunal but it was not considered. The driver of said tractor was holding license of LMV; but he was not possessing license of transport vehicle so he was not possessing legal and valid license. But this fact was not

considered by the Tribunal. The learned counsel for the appellant relied on the judgment passed by this Court in First Appeal No.1824 of 2019 [New India Assurance Company Ltd. Vs. Meerabai Somnath Kumbhar & others], decided on 6<sup>th</sup> September, 2021.

6] It is the contention of learned counsel for respondent no.1 that no evidence produced before the Tribunal to prove that the deceased himself jumped before the tractor. The learned counsel further submits that though the driver i.e. respondent no.3 was holding license of light motor vehicle, there is no necessity to obtain separate endorsement and he can drive transport vehicle of LMV class. He relied upon the judgment of the Hon'ble Apex Court in the case of **Sant Lal Vs. Rajesh and others** reported in **2017 DGLS (SC) 1037**.

7] I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is whether the death caused due to act of the deceased and validity of license of respondent no.3.

8] Firstly I deal with issue whether death caused due to act of the deceased :-

The owner of vehicle [respondent no.2], namely, Shri Gangadhar Ramchandra Korke filed his evidence and stated that the deceased came in front of the vehicle, due to which the accident was occurred. It is significant to note that crime is registered for the said accident against respondent no.3. Because of his rash and negligent driving, the death of deceased was caused. Moreover, the appellant did not examine driver of offending vehicle to prove their contention about negligence of the deceased. On the date of accident, the deceased and respondent no.3 were present. Respondent no.3 was driving the tractor. Had it been the negligence of deceased, respondent no.3 would have informed the police about accident and police would have recorded his statement and crime would not have been registered against respondent no.3. It has not come on record that respondent no.3 has informed the police about negligence of deceased. No efforts were made by

respondent no.3 or 2 at that time to inform the police about actual incident. It seems that to avoid liability and to avoid to pay compensation the afterthought story is prepared by respondent no.2. Hence, I do not find any substance in the contention of the learned counsel for the appellant that death of deceased was caused due to his negligence.

9]           Validity of license :-

It is the contention of learned counsel for the appellant that tractor as alleged to be involved in the accident is driven by the present respondent no.3. The tractor was attached with two trolleys loaded with sugar cane. The present respondent no.3 was having driving license to drive light motor vehicle and not transport vehicle. So respondent no.3 was not having valid and effective driving license to drive said tractor at the relevant time of the alleged accident. Admittedly, respondent no.3 was possessing light motor vehicle driving license at the time of accident. He was driving the tractor. The Hon'ble Apex Court in the case of **Sant Lal [supra]** held that driver having license to drive light motor vehicle can drive such a

transport vehicle of LMV class and there is no necessity to obtain separate endorsement, since tractor attached with the trolley was transport vehicle of the category of light motor vehicle. Hence, there was no breach of the conditions of the policy. The ratio laid down by the Hon'ble Apex Court is identical in the present matter. As driver [respondent no.3] was possessing licence of light motor vehicle and he was driving tractor along with trolley, I have gone through the judgment cited by the learned counsel for the appellant. This judgment is given by this Court, as observed earlier ratio laid down by the Hon'ble Apex Court is identical in the present matter, hence I am not considering the judgment cited by the learned counsel for the appellant.

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

### **ORDER**

- i] Appeal is dismissed.
- ii] No order as to costs.

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