

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

FIRST APPEAL NO. 1891 OF 2012

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

**..APPELLANT
(Ori. Resp. No.2)**

VERSUS

1. Anjum Begum D/o Sk. Ajij
Age : 10 years, Occ : Education,
U/G of Father Mr.Sk. Ajij S/o Yousuf,
Aged : 53 years, Occ : Busi,
R/o Aundha (N), Tq. And Dist. Parbhani
2. Mr.Sabdarkhan S/o Asadullakhan Pathan
Age : Major, Occ : Business,
R/o Kazi galli, Aundha (N), Dist. Parbhani.

**..RESPONDENTS
(Resp. No.1 is ori. Claimant &
Resp. No.2 is Ori. Resp. No.1)**

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Advocate for Appellant : Mr. R.F. Totala
Advocate for respondent no.1:Mr.Syed S. Shaikh
Advocate for respondent no.2 : Mr.R.J. Nirmal

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CORAM : S.G.DIGE, J.

DATE : 19.09.2022

PER COURT :

The issue involved in this appeal is pay and

recovery order passed by the Member, Motor Accident Claims Tribunal, Basmat (for short, “the Tribunal”).

2. It is the contention of the learned counsel for the appellant – insurance company (orig. respondent no.2) that the rider of the offending vehicle was not holding valid and effective driving license. The burden of proof to prove that rider was having valid driving license was upon the owner of the vehicle and not on the insurance company. Moreover, it was imperative on the part of the claimant to examine his mother, who was eye witness and accompanying the claimant at the time of accident. Therefore, as there was breach of the terms and conditions of the insurance policy, the appellant – insurance company is not liable for the compensation to be paid to the claimant, but this fact was not considered by the Tribunal. Hence requested to allow the appeal.

3. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal.

4. The issue of pay and recovery order is no more *res integra*, in view the judgment of the Hon'ble Apex Court in the case of ***Pappu and others Vs. Vinod Kumar Lamba and another*** reported in ***2018 AIR (SC) 592*** . Moreover, the compensation amount is Rs.40,000/-, which is meagre and it is awarded because the claimant has suffered 20% permanent physical disability.

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

ORDER

- (i) The appeal is dismissed.
- (ii) No order as to costs.
- (iii) Respondent no.1 is permitted to withdraw the amount, if already not withdrawn.
- (iv) Appeal is disposed of accordingly.

[S.G.DIGE]
JUDGE

SGA/-