IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1060 FIRST APPEAL NO.41 OF 2018

United India Insurance Company Ltd.
Through its Branch Manager, Branch Office,
Mansing Market, 2nd Floor, Jalgaon
Through its Authorized Signatory /
Divisional Manager,
Divisional Office, Osmanpura,
Aurangabad. .. **APPELLANT**

VERSUS

1] Amarsing Rupchand Pardeshi,
Age: 57 years, Occupation : Agriculture,
R/o. Satgaon, Taluka Pachora,
District Jalgaon.

2] Pratap Amarsing Pardeshi,
Age: 29 years, Occu. Agriculture,
R/o. Satgaon, Taluka Pachora,
District Jalgaon.

3] Maharashtra State Road Transport
Corporation, Jalgaon. .. **RESPONDENTS**

...

Mr.S.G.Chapalgaonkar, Advocate for the appellant.
Mr.M.R.Bhokarikar, Advocate for respondent no.1
Mr.M.K.Goyanka, Advocate for respondent no.3.

...

CORAM : S.G.DIGE, J.
DATE : 13.10.2022

P.C. :

1] The issue involved in this appeal is that at the time of accident whether the driver of motorcycle was holding the effective and valid driving license or not ?

2] It is the contention of the learned counsel for the appellant that on 23.12.2008, the original claimant – respondent no.1 [for short 'claimant'] was proceeding on motorcycle as a pillion rider. At the same time, the S.T. bus came from opposite direction and dashed against the motorcycle. On account of said accident, the claimant suffered grievous injury to his left leg. The appellant in it's written statement had taken a specific plea that at the time of accident, the rider of motorcycle – respondent no.2 was not holding effective and valid driving license. The charge sheet filed by the police would show that respondent no.2 was not holding valid license, therefore, charge under Section 3 [181] of the Motor Vehicle Act is incorporated against respondent no.2, which is sufficient to indicate that respondent no.2 was not holding valid and effective driving license. But this fact was not considered by the Tribunal and has fastened liability jointly and severally on the appellant, hence, requested to allow the appeal.

3] It is the contention of the learned counsel for respondent nos. 1 and 2 that the appellant has not examined any witness to prove that respondent no.2 was not holding valid and effective driving license at the time of accident. It was burden on the appellant to prove the said fact. No Officer from the RTO office is examined to prove this fact, hence, requested to dismiss the appeal.

4] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. The issue involved in this appeal is whether respondent no.2 rider of the motorcycle was holding effective and valid driving license at the time of accident or not. The Tribunal has observed that the appellant has not examined the person from RTO office to prove that respondent no.2 was not holding valid driving license at the time of accident. In my view, defence was taken by the appellant in the written statement mentioning that respondent no.2 was not holding valid driving license at the time of accident, moreover, charge sheet in respect of the said accident was filed against respondent no.2, which is at Exhibit-41. In this charge sheet, respondent no.2 was prosecuted for the offence punishable under Section 3/181 of the Motor Vehicle Act, is punishable with imprisonment for a term which may extend to three months, or with fine [of five thousand rupees], or with both. The learned counsel for the appellant while arguing the matter submitted before this Court that if at this stage respondent no.2 produces driving license, he will withdraw the appeal. The learned counsel for respondent no.2 failed to produce it, he took instructions from his client i.e. respondent no.2 and submitted to this Court that appropriate order be passed. In my view, when specific charges were leveled against respondent no.2 for not holding effective and valid driving license. This fact should have been considered by the Tribunal. During the course of argument also, respondent no.2 failed to produce effective and valid driving license. It shows that there is breach of terms of insurance policy. The appellant shall pay compensation as per its share to respondent no.1 and shall recover it from respondent no.2. Hence, I pass the following order :

ORDER

i] Appeal is partly allowed.

ii] The appellant and respondent nos. 2 and 3 jointly and severally liable to pay compensation as fixed by the Tribunal along with accrued interest thereon. Appellant shall pay the amount as per it's share along with accrued interest thereon and shall recover it from respondent no.2 – Pratap Amarsing Pardeshi. Respondent no.1 / claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

iii] Appeal is disposed of accordingly.

[S.G.DIGE]
JUDGE

DDC