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**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.78 OF 2017**

THE NEW INDIA ASSURANCE
CO., HAVING OFFICE AT
SALGAONKAR CHAMBERS,
MARGAO-GOA.

.... APPELLANT

Versus

1. SHRI SAYED NAZIR AHMED,
SON OF SAYED KARIMSAB,
AGED 51 YEARS, RESIDENT OF
H.NO.191-B, NEAR GOA
BOTTLING, ARELIM, RAIA,
SALCETE, GOA – 403713,
9850790578.

2. MS. NITA MARIA DE LIMA,
DAUGHTER OF AGNELO DE
LIMA, MAJOR OF AGE,
RESIDENT OF S-3, ANANDRAN
CO-OP. SOCIETY, NEAR DON
BOSCO ALCARE, FATORDA,
GOA (OWNER).

} deleted as per order
dtd.01.07.2015

3. SHRI SURESH BORUL
SON OF TULSIRAM BORUL,
RESIDENT OF H.NO.78,
MALBHAT, MARGAO-GOA
(DRIVER).

} appeal abated against
respondent no.3.

4. M/S. CHOWGULE
INDUSTRIES PVT. LTD.
D.B. BANDODKAR MARG,
MIRAMAR, PANAJI-GOA.

} deleted as per order
dtd.01.07.2015

...RESPONDENTS

**AND
FIRST APPEAL NO.79 OF 2017**

THE NEW INDIA ASSURANCE
CO., HAVING OFFICE AT
SALGAONKAR CHAMBERS,
MARGAO-GOA.

.... APPELLANT

Versus

1. SHRI SAYED KHADAR,
SON OF SAYED KHAJA
HUSSAIN, AGED 50
YEARS, RESIDENT OF
H.NO.211, NAVELIM
SIRVODEM, MARGAO,
SALCETE, GOA - 403713,
9850790578

2. MS. NITA MARIA DE LIMA,
DAUGHTER OF AGNELO
DE LIMA, MAJOR OF AGE,
RESIDENT OF S-3, ANANDRAN
CO-OP. SOCIETY, NEAR DON
BOSCO ALCARE, FATORDA,
GOA (OWNER).

} deleted as per order dated
01.07.2015

3. SHRI SURESH BORUL
SON OF TULSIRAM BORUL,
RESIDENT OF H.NO.78,
MALBHAT, MARGAO-GOA
(DRIVER).

4. M/S. CHOWGULE INDUSTRIES
PVT. LTD. D.B. BANDODKAR
MARG, MIRAMAR, PANAJI-GOA.

} deleted as per order
dated 01.07.2015
...RESPONDENTS

Mr. U.R. Timble, Advocate for the Appellant.

CORAM : M. S. SONAK, J.

DATE : 29th APRIL 2022

ORAL JUDGMENT :

1. Heard Mr. U.R. Timble, learned Counsel for the appellant in both these appeals.

2. A common order can dispose of both these appeals because they concern Claim Petitions arising out of the same accident that took place on 16.05.2013 involving a Swift Dzire car bearing registration no.GA-08-K-0074.

3. Mr. Timble submitted that the driver of the above car only had a learner's license to drive a motorcycle with gears. Therefore, the driver was not entitled to drive the Swift Dzire car based on a learner's license. He submits that this is a fundamental breach of the insurance policy terms and, therefore, the Insurance Company should have been exonerated. He submits that the pay and recover order should have been made in any case and without prejudice. Mr. Timble submitted that in this case, Ms. Nita Maria de Lima was the registered owner of the Swift Dzire. He submitted that though it was her case, she had sold the vehicle to M/s. Chowgule Industries Pvt. Ltd., in the records of RTO, she continued to be the registered owner. He submitted that having regard to the provisions of Section 2(30) of the MV Act and the

decision of the Hon'ble Supreme Court in *Naveen Kumar V/s. Vijay Kumar & Ors.*¹ & *Prakash Chand Daga V/s. Saveta Sharma & Ors.*², the registered owner should be held liable.

4. Mr. Timble points out that the same issue arises in both the appeals and, therefore, the same submissions are made in both the appeals.

5. Ordinarily, the submissions of Mr. Timble could have been accepted and the pay and recovery order made against not only the driver but also against the registered owner of the Swift Dzire vehicle. However, in the peculiar facts of the present case discussed after this, no relief can be granted to the appellant in these appeals.

6. Now, in the cause title to both these appeals, respondent no.1 is the claimant. Respondent no.1 has not even been served in both these appeals, even though the appeals were instituted in 2017. In any case, based on the submissions of Mr. Timblo, the proposal was not to deny the claimants their compensation, but the proposal was only to permit the Insurance Company to

1 (2018) 3 SCC 1

2 (2019) 2 SCC 747

recover such compensation from the driver and the registered owner.

7. Respondent no.2 in both these appeals is Ms. Nita Maria de Lima, the registered owner of the Swift Dzire motor car. However, as per the order dated 01.07.2015 made by the Tribunal, Ms. Nita Maria de Lima stands deleted as a party before the Tribunal. No steps were taken to serve her in these appeals.

8. The driver Shri Suresh Borul was impleaded as the third respondent in these appeals, and it is reported that he has since expired. His legal heirs also have not been brought on record.

9. Respondent no.4 is also shown as deleted before the Tribunal as per the order dated 01.07.2015. Based on Mr. Timblo's submission, no liability can be imposed on respondent no.4.

10. Considering the above peculiar facts and circumstances, no relief can be granted to the appellant in these matters. These appeals are accordingly dismissed without any orders for costs.

11. If the appellants have deposited the amounts before this Court, the claimants are allowed to withdraw the same by furnishing identity documents and bank details.

M. S. SONAK, J.