

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 162 OF 2009**

National Insurance Co. Ltd.-)
Vazirpur Branch, Mohan Tower,)
1st floor, Vazirpur Complex,)
Ring Road, DELHI-110052,)
Now- MRO II, Sterling Cinema Bldg.,)
5th Floor, 65, Murzaben Street,)
Fort, Mumbai – 400001.) ...Appellant

Versus

1. Smt. Seenabai Prakash Rathod)
Age : 22 years; Occ: House hold)

2. Kumar Shubham Prakash Rathod)
Age : 15 years; Occ: Nil)

3. Shri. Narayan Genur Rathod)
Age: 50 years; Occ: Agriculture)

4. Sau. Gagubai Genu Rathod)
Age: 45 years; Occ: Houssehold)
(Applicant no.2 being a minor is)
represented by Natural Guardian)
mother applicant no.1)
All residing at : 43, Genu Niwas,)
Kamal Nagar, Vijapur Road,)
Solapur)

5. Shri. Rajendra Bhupendra Bhandari)
Age: adult; Occ: Business)
R/at BH-22 (East) Shalimar Baug,)
Delhi-110052.)Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocates for the Appellants.

Ms. Devyani R. Dhawale along with Mr. Samir A. Vaidya, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 23rd DECEMBER, 2022.

Judgment:

1. Being aggrieved and dissatisfied with the judgment and order passed by Motor Accident Claims Tribunal, Solapur, the appellant-respondent No.2 preferred this appeal.

2. Brief facts of the case are as under:

On 13th December, 2001 on Solapur-Vizapur National Highway No.13, the deceased Prakash was going on his Bullet Motorcycle towards Solapur from Kamala Nagar at relevant time one goods transport truck No.HR/55/1023 came from Vijapur side in fast speed and dashed the motorcycle. Due to the said dash, Prakash was seriously injured and died on the spot due to the injuries. Crime was registered against the driver of the offending truck.

3. Respondent Nos.1 to 4/original claimants (for short “the claimants”) filed claim petition for getting compensation before the

Motor Accident Claims Tribunal, Solapur (for short “the Tribunal”). The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

4. It is the contention of learned counsel for the appellant that at the time of the accident, the driver was not holding effective and valid driving license. There was breach of policy conditions and rules. The driving license produced by the driver shows that the same was issued by RTO Guwahati. But Guwahati RTO had informed that the said license was false and fake. It shows that at the time of the accident, the driver was not holding effective and valid driving license but this fact is not considered by the Tribunal and the Tribunal has awarded compensation which is improper. Hence, requested to allow the appeal

5. It is the contention of learned counsel for the respondents that the driver had produced the driving license. It was the duty of the appellant to prove it was fake driving license but no witness was examined by the appellant to prove that the said driving license was fake. The driving license is marked as Exhibit - 61. It was issued by RTO-Itaha. In the absence of evidence from the appellant to prove

that the said driving license was fake, the Tribunal has rightly held that the driver was holding an effective and valid driving license. The judgment and order passed by the Tribunal is legal and valid.

6. I have heard both learned counsel, perused the judgment and order passed by the Tribunal. The issue involved in this appeal is whether at the time of the accident, the driver of the offending truck was holding a valid and effective driving license.

7. It appears from the record that the driving license of the driver of the offending truck was produced by the police. Exhibit 61 is the driving license. It is a duplicate copy of the driving license. The Tribunal has scrutinized documents produced on record and come to the conclusion to issue witness summons. Accordingly, witness summons was issued to the officer of the RTO-Guwahati. It was informed by letter by the RTO Guwahati that no driving license was issued by the RTO Guwahati to Shri. Rohatsingh Indersingh. The said letter is at Exhibit -78. The Tribunal has observed that the license which was issued by the RTO Guwahati is not proved and is not accepted. As against this, the Respondent No.5 – Rajendra Bhupendra Bhandari produced the duplicate copy of the driving

license of Rohatsingh produced by RTO Guwahati at Exhibit - 61. No proof is brought by opposite party to prove that it is fake or false. Therefore, Exhibit 61 shows that the license available with driver Rohitsingh i.e. driver of the offending truck at the time of the accident was valid till 15th May, 2005. I do not find any infirmity in it.

8. In my view, though it was the specific case of the appellant before the Tribunal that at the time of the accident, the driver of the offending truck was not holding a valid and effective driving license and the license produced by the driver of the offending truck was fake, then, the burden was on the appellant to prove it, but the appellant did not examine any witness to prove their contention. Hence, the appeal is devoid of merit.

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

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the compensation amount along with accrued interest thereon deposited by the appellant.

3. The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.
10. Pending civil/interim applications, if any, stand disposed of.

(S. G. DIGE, J.)