IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.172 OF 2019
WITH
INTERIM APPLICATION NO.765 OF 2021
IN
FIRST APPEAL NO.172 OF 2019

1) SMT. MANISHA SANJAY NIKAM)
Age 39 years, Occ : Household)
)
2) SHRADDHA SANJAY NIKAM)
Age 20 years, Occ : Education)
)
3) MAYURI SANJAY NIKAM)
Age 15 years, Occ : Education)
)
4) JAY SANJAY NIKAM)
Age 20 years, Occ : Education)
Nos. 3 & 4 are minors through)
guardian Mother i.e. Applicant No.1)
)
5) SHANTABAI BALASO NIKAM (Deceased))
Through L.R's i.e. Applicant Nos.1 to 4)
All above R/at : Vadoli Bhikeshwar,)
Taluka – Karad, District – Satara.)...APPLICANTS

IN THE MATTER BETWEEN

1) THE NEW INDIA ASSURANCE CO. LTD.)
Through Mumbai Legal Hub Branch)
No.151701, Near Kamani Haud, Satara,)
Taluka & District Satara, 1036-E,)
Rajaram Road, Kolhapur.)

Through Mumbai Legal Hub, 41-B,	)
4th Floor, Maker Tower – E, Near	)
World Trade Centre, Cuffe Parade,	)
Mumbai – 400005	)...APPELLANT

V/s.

1) SMT. MANISHA SANJAY NIKAM	)
Age 39 years, Occ : Household	)
	)
2) SHRADDHA SANJAY NIKAM	)
Age 20 years, Occ : Education	)
	)
3) MAYURI SANJAY NIKAM	)
Age 15 years, Occ : Education	)
	)
4) JAY SANJAY NIKAM	)
Age 20 years, Occ : Education	)
Nos. 3 & 4 are minors through	)
guardian Mother i.e. Applicant No.1	)
	)
5) SHANTABAI BALASO NIKAM (Deceased)	)
Through L.R's i.e. Applicant Nos.1 to 4	)
All above R/at : Vadoli Bhikeshwar,	)
Taluka – Karad, District – Satara.	)
	)
6) MAHINDRAKUMAR MANSUKHLAL SHAH	)
Age 39 years, Occ : Business	)
R/at : 33, Ajinkya Co-op. Housing	)
Society, Sadarbazar, Satara,	)
Taluka & District Satara.	)
	)
7) PRASHANT BHAGWAN SHIDTURE	)
Age : Adult, Occ :	)
R/at : Jalgaon, Taluka – Koregaon	)
District – Satara (DELETED)	)...RESPONDENTS

Mr.Girish Agarwal, Advocate for the Applicant in I.A.No.765 of 2021.
Mr.D.S.Joshi, Advocate for the Respondent in I.A.No.765 of 2021 and Appellant in F.A.No.172 of 2019.

CORAM : V. G. BISHT, J.

RESERVED ON : 11th FEBRUARY 2022
PRONOUNCED ON : 17th FEBRUARY 2022

JUDGMENT :

1 This first appeal is preferred by the New India Assurance Company Limited (original respondent) against the judgment and order dated 13th April 2018 passed in M.A.C.P. No.62 of 2013 by the learned Member, M.A.C.P., Karad thereby directing the appellant and others to pay jointly and severally to the claimant a sum of Rs.7,11,000/- towards compensation together with simple interest thereon at rate of 6% p.a. from the date of petition till realization of entire amount within two months from the passing of the judgment and order.

2 I have heard both the parties. The learned counsel for appellant has raised a very short issue. As far as the amount of award is concerned, it is not disputed. However, according to the learned counsel for appellant, the learned Tribunal ought to have considered that on the date of accident, the driver was not holding a valid driving license and in such circumstances, it ought to have ordered that the appellant is entitled to recover the amount of award from the owner of the vehicle of the offending truck, which was rejected by the learned Member.

3 I have also heard the learned counsel for the respondent / claimant who also admits the position of law and has no objection if it is so ordered by this Court.

4 On going through the record it is seen that respondent no.6 - owner of the offending truck though duly served through private notice i.e. through Registered A.D./ Speed Post (Flag B) but remained absent. It is also seen from the record that during

the pendency of the present appeal, the driver of the said offending truck i.e. respondent no.7 came to be deleted, in view of pursis (Exhibit 21) filed before the M.A.C.T.

5 Perused the impugned judgment and order.

6 Though learned trial Court noted that on the date of accident the driver of the offending vehicle was having no driving license, but made following observations at paragraph 21 :

> “21 However, from the above details of license it can be said that offending truck driver has a driving skill to drive the truck and it is difficult to say that he has lost his skill or forgotten expertise for driving the vehicle. The said driver has got renewed the license w.e.f. 27/3/2013 after it was expired on 12/2/2012. The accident took place hardly 11 days prior to 27/3/2013. Therefore, I am of the opinion that the opponent no.3 cannot avoid its liability. Therefore, opponent nos.1 and 3 are liable to pay compensation, jointly and severally.”

6 In **Parminder Singh vs. New India Assurance Company Ltd. & Ors.**[1]**,** the Hon'ble Apex Court has held as under :

> "7. On the issue of liability to pay the compensation awarded, we affirm the view taken by the High Court that the Respondent – Insurance Company is absolved of the liability to bear the compensation, as evidence has been produced from the office of the Regional Transport Office to prove that the drivers of the two offending trucks were driving on the basis of invalid driving licenses. It is also relevant to note that the owners and drivers of the offending trucks have not appeared at any stage of the proceedings, including this Court.
>
> 7.1. This Court in Shamanna & Ors. v. The Divisional Manager, The Oriental Insurance Co. Ltd. & Ors., held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim, and then recover the amount from the owner of the offending vehicle.4 4 (2018) 9 SCC 650.
>
> 7.2 We deem it just and fair to direct the Respondent – Insurance Company to pay the

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> enhanced amount of compensation as indicated in Para. 6 above, to the Appellant within a period of 12 weeks from the date of this judgment. The Respondent – Insurance Company is directed to make out a Demand Draft in the name of the Appellant, which can be used for his care for the rest of his life. The Respondent – Insurance Company is entitled to recover the amount from the owners and drivers of the two offending trucks."

7 In **Shamanna and Another vs. Divisional Manager, Oriental Insurance Company Limited and Others**[2], the Hon'ble Apex Court has has held as under :

> "14 So far as the recovery of the amount from the owner of the vehicle, the insurance company shall recover as held in the decision in Oriental Insurance Co. Ltd. v. Nanjappan and others (2004) 13 SCC 224 wherein this Court held that : (SCC p. 226 para 8)
>
> > "8......For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a

2 (2018) 9 Supreme Court Cases 650

> proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer.””

8 From the impugned judgment and order at hand it is more than clear that on the date of accident the driver of the offending vehicle was having no valid driving license. This being so, the learned Member, M.A.C.T., could not have overlooked that infirmity while fixing the responsibility of the respondents. It seems that the learned Member also did not keep in mind the above dictum of the Hon'ble Apex Court and for that simple reason the finding of the learned Member is not sustainable in law.

9 In the result, the impugned judgment and order of the learned Member of the M.A.C.T., in so far as amount of award is concerned, the same is affirmed. Further, in so far as direction given to the appellant directing the appellant to pay the sum of

Rs.7,11,000/- towards compensation together with simple interest is concerned, is set aside, and the appeal is partly allowed. In view of above, pending Interim Application 765 of 2021 also stands disposed off.

10 I direct that the appellant Insurance Company shall pay the compensation to the respondents/claimants along with accrued interest and the appellant Insurance Company shall recover the same from the owner of the vehicle i.e. respondent no.6. No costs.

(V. G. BISHT, J.)