

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1304 OF 2017

1. Shri.Amir Abba Pinjari)
Age: 69 years, Occ: Agriculturist,)
R/o. Ekta Colony, Market Committee)
Employees Society, Vasant Market)
Yard, Sangli.) ...Appellant

Versus

1. Sanjaykumar Parshuram Kadam)
Age: Adult, Occ: Vehicle Owner,)
R/o Laxmi Nagar, Hudco Colony)
Sangli.)
2. Shri. Mohan Nana Sargar)
Age: Adult, Occ: Driver,)
R/o. Kulkarni Plot, Sangli)
3. The Oriental Insurance)
Company Ltd., Krishna Commercial)
Complex, Aamrai Road, Sangli) ..Respondents

Mr. Kuldeep Nikam, for the appellant.

Ms. S.S. Dwivedi, for the Respondent No.3.

CORAM : S.G. DIGE, J.

DATE : 22 DECEMBER 2022

JUDGMENT:-

1. The issue involved in this appeal is exoneration of the insurance company from paying the compensation.

2. It is contention of learned counsel for appellant that the Motor Accident Claim Tribunal, Sangli (for short 'the Tribunal') has allowed the claim petition of the appellant but has exonerated the respondent no.3 i.e. Oriental Insurance Company from paying compensation.

3. Learned counsel further submits that out of the same accident, the Tribunal has passed the order and in said order, the Tribunal has directed to respondent no.3 to satisfy the award first and recover the amount from respondent nos.1 and 2. Hence, requested to allow the appeal.

4. Learned counsel for respondent no.3 vehemently submits that the Tribunal has exonerated respondent no.3 on the ground that there was breach of terms and conditions of insurance policy. So, the order passed by the Tribunal is on merit. Hence, no interference is required in it. The order passed in the connected matter out of the same accident is not relevant in the present appeal. Hence, requested to dismiss the appeal.

5. Learned counsel for the appellant submits that the appellant has not recovered any amount from the respondent nos. 1 and 2 under execution proceedings. Learned counsel for appellant further submits that the compensation amount is of Rs.3,10,000/-, and said amount is yet not deposited by the respondent nos. 1 and 2. If this Court inclines to allow the appeal by giving direction to the respondent no.3 to pay the compensation amount as directed by the Tribunal and recover it from respondent nos. 1 and 2, in that case, the said amount be restricted to Rs. 5,00,000/- including interest on amount of Rs.3,10,000/-. The appellant is present in Court and on his instruction, he is making this statement.

6. I have heard both learned learned counsel.

7. Perused impugned judgment and order. Admittedly, in the connected matter out of same accident, the Tribunal has directed to respondent no. 3 to pay the compensation amount and recover it from respondent nos. 1 and 2 who are same in the present matter.

8. It is the contention of respondent no.3 that there was breach of terms and conditions of insurance policy, as the driver of the offending vehicle was not holding effective and valid driving licence at the time of accident.

9. It is settled principle of law that if the driver was not holding effective and driving licence at the time of accident, insurance company has to satisfy award first and recover it from the owner of the offending vehicle. The Tribunal has not considered this fact.

10. In view of above, I pass following order.

ORDER

i. Appeal is allowed. No order as to cost.

II. The Tribunal has awarded compensation of Rs.3,10,000 but as per the statement of learned counsel for appellant the respondent no.3 shall pay total amount of Rs.5,00,000/- including interest on Rs.3,10,000/- within 8 weeks. The Respondent No.3 recover the said amount from Respondent Nos. 1.

iii. The appellant is permitted to withdraw the deposited amount by the respondent no.3.

11. Appeal is disposed of.

12. All pending civil/interim applications are disposed of.

(S.G. DIGE, J.)