

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

FIRST APPEAL NO. 1401 OF 2019

Reliance General Insurance Co. Ltd. Appellant
v/s.
Ravinath Uttam Hire and ors. Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture for the Appellant.
None for the Respondents.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 29th JULY, 2022.

P. C. :-

. None present for the Respondent No.1. Heard learned counsel for the Appellant. I have perused the records.

2. The Appellant – Insurance Company has challenged the judgment and award dated 27/02/2018 passed by the Motor Accident Claims Tribunal, Nashik in M.A.C.P No.672/2013. By the impugned judgment, the Claims Tribunal, Nashik has allowed the application under section 166 of Motor Vehicles Act and directed the Appellant – Insurance Company as well as the insured to pay to the Respondents/claimants jointly and severally an amount of Rs.15,94,136/-. The Appellant – Insurance Company has challenged the judgment only on the ground that it is not liable to indemnify the insured for breach of terms and

conditions of the policy. It was the case of the Appellant – Insurance Company that the insured had not obtained permit to ply the vehicle on Nashik route.

3. The material on record reveals that the black-yellow Jeep No.MH-04-E-1553 was involved in an accident on 12/05/2013 while it was carrying passengers from Nashik to Mumbai. One Latabai Uttam Ahire, who was one of the passengers, died as a result of the injuries sustained in the said accident. The husband and children of the deceased – Latabai filed claim petition claiming total compensation of Rs.40,00,000/- from the owner and the insurer of the offending vehicle. The Appellant – Insurance Company had raised a defence that it is not liable to indemnify the insured for breach of terms and conditions of the policy. It was alleged that the driver of the vehicle was not holding a valid and effective driving license and that the owner/insured had also not complied with the mandatory provisions with Rule 255-A of Maharashtra Motor Vehicles Rules, 1989.

4. The Tribunal after considering the evidence on record held that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. Considering the age, income and other

factors, the Tribunal awarded compensation of Rs.15,94,136/-. The Tribunal held that though the Appellant – Insurance Company had examined one RTO to prove its defence of breach of terms and conditions of the policy, he had admitted that he had no personal knowledge if the insured had infact obtained such permission to ply the taxi on Nashik route. The Tribunal took note of the fact that the witness had not produced the records to prove that the permit which was obtained by the insured was restricted only to Thane region. The Tribunal therefore held that the Appellant – Insurance Company has failed to prove the breach of terms and conditions of the policy and consequently held that it is liable to absolve the insured.

5. It is not in dispute that the offending vehicle was insured by the Appellant – Insurance Company. There is no evidence to show that the driver had driven the vehicle without holding valid and effective driving license. It is also not in dispute that the owner had obtained the permit to ply the vehicle as a tourist vehicle. There is no material on record to indicate that the insured/owner had not obtained valid permit to ply the said vehicle in Nashik Region.

6. Considering the above facts and circumstances, in my considered

view, the Insurance Company has failed to prove breach of terms and conditions of the policy. The findings recorded by the Tribunal are based on evidence on record and do not warrant interference. The Appeal has no merits and is accordingly dismissed. Statutory deposit along with interest accrued thereon be transferred to MACT, Nashik. Compensation deposited by the Appellant – Insurance Company shall be paid to the claimants as per the impugned judgment and award.

7. Pending applications, if any, stands disposed of in view of dismissal of the Appeal.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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