IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.684 OF 2014
AND
FIRST APPEAL NO.752 OF 2014

FIRST APPEAL NO.684 OF 2014
Kamlabai w/o Suresh Thakre, aged 55 years,
R/o Ranbgari Thoka, tahsil Saunsar, district Chindwara,
Mandya Pradesh. ….. **Appellant**.

:: **V E R S U S** ::

1. Miragauri s/o Gordharibhai Chavde,
Aged major, r/o Bhadui, tahsil Kotada Sangani,
District Rajkot-360 030.

2. The Branch Manager, Oriental Insurance Co.
Ltd., Rajkot, through Nagpur office, D.O. II
Laxminagar Square, West High Court Road,
Dharampeth Extension, Nagpur. ….. **Respondents**.

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Shri Asghar Hussain, Counsel for the Appellant.
None for Respondent No.1.
Shri Lalit Limaye, Counsel for Respondent No.2.

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FIRST APPEAL NO.752 OF 2014

Manoj s/o Suresh Thakre, aged 33 years,
R/o Ranbgari Thoka, tahsil Saunsar, district Chindwara,
Madhya Pradesh. ….. **Appellant**.

:: **V E R S U S** ::

1. Miragauri s/o Gordharibhai Chavde,
aged major, r/o Bhadui, tahsil Kotada Sangani,
District Rajkot-360 030.

2. The Branch Manager, Oriental Insurance Co.
Ltd., Rajkot, through Nagpur office, D.O. II
Laxminagar Square, West High Court Road,
Dharampeth Extension, Nagpur. ….. **Respondents**.

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Shri Asghar Hussain, Counsel for the Appellant.
None for Respondent No.1.
Shri Lalit Limaye, Counsel for Respondent No.2.

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CORAM : SMT.ANUJA PRABHUDESSAI, J.
DATE : FEBRUARY 04, 2022

COMMON JUDGMENT

1. Hearing was conducted through Video Conferencing and learned counsel for parties agree that Video and Audio quality was proper.

2. Heard learned counsel Shri Asghar Hussain for the appellants and learned counsel Shri Lalit Limaye for respondent No.2/Insurance Company.

3. The appellants, who are the claimants in Claim Petition Nos.168/2008 and 167/2008, have challenged the judgment and award dated 2.1.2014 passed by learned Member, Motor Accident Claims Tribunal-4, Nagpur in Claim Petition Nos.168/2008 and 167/2008. By the impugned judgment, the Tribunal has awarded compensation of

Rs.1,68,600/-. The Tribunal dismissed the petition against respondent No.2/Insurance Company and directed owner of the offending vehicle to pay the compensation.

4. Learned counsel for appellants (hereinafter referred to as, "claimants") states that there is absolutely no evidence to prove breach of terms and conditions of the policy and as such the Tribunal was not justified in exonerating the Insurance Company from indemnifying the insured.

5. Learned counsel for respondent No.2/Insurance Company, states that the Tribunal has taken note of the fact that the driver of the offending vehicle was charged for offence punishable under Section 185 of the Motor Vehicles Act. The Tribunal has observed that the driver was unable to control the vehicle since he was in drunken state. Learned counsel, therefore, submits that the findings are based on evidence on record. He contends that the Insurance Company is not liable to indemnify the insured for breach of terms and conditions of the policy.

6. I have perused the records and considered submissions of learned counsel for respective parties.

7. The only point for consideration is, whether the driver of the offending vehicle had driven the vehicle under the influence of liquor and that the Insurance Company is not liable to indemnify the insured for breach of terms and conditions of the policy.

8. It is not in dispute that the deceased Suresh died due to the injuries sustained in a motor vehicle accident. The offending vehicle was insured by the respondent No.2 – Company. The Tribunal has recorded a finding that the accident was caused due to rash and negligent driving by the driver of the offending vehicle. The respondent No.2 is therefore liable to indemnify the insured unless it has proved the defence of breach of terms and conditions of the Policy.

9. In this regard, the Tribunal has accepted the defence that the driver had driven the vehicle under the influence of alcohol and has therefore exonerated the respondent No.2 – Insurance Company as its liability to indemnify the insured for breach of terms and conditions of the Policy.

10. The Tribunal has held that the driver was charged for offence under Section 185 of the Motor Vehicles Act, 1988. The Tribunal has also relied upon the certificate (Exh.41-A); wherein the doctor has certified that the driver was in drunken state. It is pertinent

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to note that the Tribunal has observed that blood sample of the deceased was not taken. There was thus no evidence to prove that the blood of the accused contained alcohol in the blood beyond permissible limits. There is also no proof of breath analysis test. There is thus no evidence to prove that the driver was in such an inebriated condition that he could not control the vehicle. In fact the Tribunal has observed that the doctor has merely stated that the driver was drunk, that there is no evidence to prove that the driver was not in a position to control the vehicle. Yet the Tribunal has accepted the defence on the basis of the medical certificate at Exh.41-A. The Tribunal has erred in relying upon the said certificate inasmuch as the doctor i.e. the author of the certificate has not been examined. There is no evidence to prove that the driver was not in a fit condition to drive the vehicle. Under the circumstances, the Tribunal has grossly erred in exonerating the respondent No.2-Insurance Company from indemnifying the insured on the ground of breach of terms and conditions of Policy.

11. The findings of the Tribunal that the driver had driven the vehicle under the influence of liquor and he was unable to control the vehicle are not based on the record and the same cannot be sustained. Under the circumstances, the first appeals are allowed. It is held that respondent No.1/owner of the vehicle and respondent No.2/Insurance

Company are jointly and severally liable to pay the claimants compensation as awarded by the Tribunal.

12. Learned counsel for the Insurance Company states that the Insurance Company will deposit the compensation along with interest within a period of twelve weeks from today.

JUDGE

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BHUSHAN RANA WANKHEDE

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Date: 2022.02.22 11:28:22 +0530