IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.552 OF 2012

1 Sunita Rajendra Kulkarni)
Age 38 years, OccL Household)
Resident of Mayur Housing Society,)
Sangli, Taluka Miraj, District Sangli.)
2 Amit Rajendra Kulkarni,)
Age 15 years, Occ : Education,)
3 Vaibhavi Rajendra Kulkarni,)
Age 11 years, Occ: Education)
Nos. 2 and 3 through natural)
Guardian, mother, Applicant No.1-)
Smt. Sunita Rajendra Kulkarni,)
Age 38 years, Occ: Household.)
4 Achala Balkrishna Kulkarni,)
Age 60 years, occ : Household,)
Resident of Mayur Housing Society,)
Sangli, Taluka Miraj,) ….Appellants
District Sangli.) (Orig. Claimants)

Versus

1 Mahadeo Janu Kanekar,)
Age 44 years, Occ : Service,)
Resident of 6, Best, Plot No.48,)
Santosh Nagar, Ghatla Village,)
Chembur, Mumbai – 71.)

2	Divisional Manager,	)	
	Oriental Insurance Co. Ltd.,	)	
	Division Office, Sangli,	)	
	Policy No.1618.	)	
3	Amol Gangaram Kanekar,	)	
	Age Major, Occ : Driver,	)	
	Resident of Wakawali, Taluka Dapoli,	)	
	District Ratnagiri	)	….Respondents

Mr. Varun Thokal i/b. Mr. Jayant J. Bardeskar, Advocate for the Appellants.
Ms. Poonam Mittal, Advocate for Respondent No.2- Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19TH APRIL, 2023.

Oral Judgment :

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

2. It is contention of learned counsel for the appellants/claimants that it was proved before the Tribunal that the driver of the offending vehicle was not holding effective and valid driving license at the time of accident. It is settled principle of law

that if the driver of the offending vehicle was not holding valid and effective driving license at the time of the accident, the insurance company has to satisfy the award first and then recover it from the owner of the offending vehicle but instead of passing this order, the Tribunal has observed that the Tribunal cannot pass an order directing insurance company to satisfy the award with liberty to recover it from the owner. Hence, requested to allow the appeal.

3. Learned counsel for respondent No.2- Insurance Company submitted that while passing the order, the Tribunal has considered all the aspects and on that basis, the Tribunal has passed the order, which is proper. No interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Sangli, (for short “the Tribunal”). While dealing with the issue of driving license, the Tribunal has observed that at the time of accident, the driver of the offending car was not having driving license and further observed that Tribunal cannot pass an order directing the insurance company to satisfy award with liberty to recover it from the owner. I am unable to understand the observations of the Tribunal on the ground that it is settled principle of law that in case if the driver was

not holding effective and valid driving license at the time of accident, the insurance company has to satisfy the award first and recover it from the owner of the offending vehicle. The Apex Court in the case of ***Pappu and Ors versus Vinod Kumar Lamba and Anr. (2018) 3 SCC 208*** has observed that insurance company has to pay the claim amount with liberty to recover the same from the owner of the vehicle in accordance with law. In the present case, the driver was not holding effective and valid driving license at the time of accident, hence, the insurance company has to satisfy the award and recover it from the owner of the offending vehicle.

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

O R D E R

1. The appeal is allowed. The judgment and impugned order passed by the Tribunal is modified as under :

   "The Insurance Company shall satisfy the award passed by the Tribunal and recover the said amount from the owner of the offending vehicle. The claimants are permitted to withdraw the amount deposited along with accrued interest thereon by the Insurance Company.

The first appeal stands disposed of.

6. Learned counsel for the claimants submits that while condoning the delay for filing appeal, direction was given to the claimants to waive interest for the delayed period. The claimants shall waive the interest for the delayed period as per the undertaking given by the claimants.

7. Learned counsel for respondent-insurance company undertakes to file vakalatnama. The Registry to accept the same.

8. Pending applications, if any, stand dispose of.

(SHIVKUMAR DIGE, J.)