IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.717 OF 2023

The Oriental Insurance Co. Ltd. (HUB)	}	
Thr. Its Authorized Representative	}	
Office At Mumbai Annex State Building,	}	
3rd Floor, Bank Street, Horniman Circle,	}	
Mumbai-400 001.	}	**....Appellant**

V/s.

1. Shri.Birbal Gudadji Survasiya	}	
R/at Vatsalatai Naik Nagar, Galli No.1	}	
Chembur, Hanuman Galli,	}	
Mumbai-400 071.	}	
	}	
2. Shri.Shrikant B. Paul	}	
R/at Vatsalatai Naik Nagar, Galli No.1	}	
Chembur, Hanuman Galli,	}	
Mumbai-400 071.	}	**....Respondents**

Mr.Anisha Didwania i/b NDB Law, for the Appellant.
Ms.Varsha Chavan, for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st DECEMBER 2023

JUDGMENT :-

. The issue involved in this Appeal is that, driver of insured vehicle was not holding effective and valid driving license at the time of the accident and there was breach of terms and conditions of the Insurance Policy.

2. It is contention of the learned counsel for the Appellant that, at the time of the accident, driver of the offending vehicle was not holding effective and valid driving license, but this fact is not considered by the Tribunal. There was breach of Terms and Conditions of Insurance Policy. Hence, pay and recovery order should have been passed by the Tribunal but, it has not been passed. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent No.1-Claimant that, Appellant-Insurance Company has not examined any witness to prove that there was breach of Terms and Conditions of the Insurance Policy and driver was not holding any effective and valid license, hence, the order passed by the Tribunal is legal and valid, no interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mumbai.

5. The Appellant-Insurance Company has raised the issue that, driver of Insured vehicle was not holding effective and

valid driving license, at the time of the accident. But to prove their contention the Appellant's have not examined any witness before the Tribunal. Without any evidence, this Court can't consider that the driver was not holding effective and valid driving license while dealing with this issue. The Tribunal has observed that, the witness examined by the Insurer, has admitted in cross-examination that, on the basis of the charge-sheet he has stated that the driver was not holding effective and valid license and he has not served notice on the owner. The Tribunal has observed about not examining the driver by the Appellant and on that basis, order is passed. I do not find any infirmity in it.

6. Considering the above reasons, I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Respondent's/Claimant's are permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)