IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1217 OF 2015

Shri. Devsingh Janaksingh Devada
Resident of-81, Bhavani Peth,
Gool Ali, Pune-42. …Appellant

Versus

1. Umeshchandra Premshankar Shukla,

2. Awadesh Kumari Umeshchandra Shukla,

3. Vimalesh Umeshchandra Shukla,

4. Rajesh Umeshchandra Shukla
All residing at – 333, Parmar Residency,
N.I.B.M. Road, Kondhwa, Pune. ...Ori. Applicants

5. Chintaman G.Chand.
Resident of Fursungi, Tal- Haveli,
Dist-Pune-411 002 ...Ori. Oppt No.1

6. Divisional Manager,
The New India Assurance CO.Ltd.
Having its Divisional Office No.-6,
10, East Street, Pune Camp,
Pune-411 001. ...Ori.Oppt No.2

….(Respondents)

WITH
FIRST APPEAL NO. 699 OF 2015

Divisional Manager,
The New India Assurance Co.Ltd.
Having its Office at : D.O.6,
10, East Street, Camp, Pune-1, through

Mumbai Regional Office – 1, New India
Bhavan, 2nd Floor, 34/38, Bank Street,
Fort, Mumbai-400 023. ...Appellant
(Orig.Opponent No.2)

Versus

1. Umeshchandra Premshankar Shukla,

2. Awadesh Kumari Umeshchandra Shukla,

3. Vimalesh Umeshchandra Shukla,

4. Rajesh Umeshchandra Shukla

   All residing at – 333, Parmar Residency,
   N.I.B.M. Road, Kondhwa, Pune.

5. Chintaman G.Chand.
   Resident of Fursungi, Tal- Haveli,
   Dist-Pune-411 002

6. Shri. Devsingh Janaksingh Devada
   Resident of-81, Bhavani Peth,
   Gool Ali, Pune-42. ...Respondents
   (Respondent No 1 to 4 are orig. Applicants/claimants and Respondent Nos. 5 and 6 are the orig. opponent nos. 1 and 2)

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Mr. D.D.Shinde for Appellant in FA/1217/2015 and for Respondent in FA/699/2015.
Mr. Sandeep S. Jinsiwale for Appellant in FA/699/2015 and for Respondent in FA/1217/2015.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 17th APRIL, 2023

Judgment :

1. These two Appeals are filed by the Appellant-Insurance Company and owner of offending vehicle, as these two Appeals are preferred against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Appellant-Insurance Company that at the time of accident, the driver of offending vehicle was holding the licence of light motor vehicle whereas, he was driving heavy transport motor vehicle. There was breach of terms and conditions of insurance policy. Inspite of breach of terms and conditions of policy, the Tribunal has passed pay and recover order, which is improper. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondent No.6 and Appellant in other Appeal submitted that at the time of accident, driver of offending vehicle was holding effective and valid driving licence, but this fact was not considered by the Tribunal and has passed impugned order of pay and recover.

4. Learned counsel further submits that it is settled principal of law that if, driver was holding driving licence to drive light motor vehicle is competent to drive transport vehicle. Hence, requested to allow the Appeal filed by the owner of offending vehicle and dismiss the Appeal filed by the Insurance Company. Learned counsel relied

on ***Mukund Dewangan vs. Oriental Insurance Co. Ltd***[1].

5. Learned counsel for the Respondents-Claimants submitted that appropriate order be passed.

6. I have heard all learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'The Tribunal'). It is contention of learned counsel for the Appellant-Insurance Company that driver of offending vehicle was holding licence of light motor vehicle and he was driving heavy motor vehicle. It shows that, he was not holding effective and valid driving licence at the time of accident there was breach of terms and conditions of insurance policy. In my view, admittedly the driver of offending vehicle was holding driving licence of light motor vehicle. As per the view of the Hon'ble Apex Court in the case of ***Mukund Dewangan supra***. When a driver was holding driving licence to drive light motor vehicle, is competent to drive transport vehicle. The Tribunal has not considered this fact and has passed pay and recover order, which is improper. In view of the above, I pass following order :-

O R D E R

(i) Appeal No.699 of 2015 is dismissed. No order as to cost.

(ii) Appeal No.1217 of 2015 is allowed.

(iii) The order passed by the Tribunal in respect of pay and recover order is modified, the Insurance Company is

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directed to satisfy the award as per the order passed by the Tribunal.

(iv) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(v) The statutory amount filed in Appeal No.699 of 2015 be transmitted to the Tribunal, along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(vi) Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)