

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

FIRST APPEAL NO. 256 OF 2021

Digitally
signed by
SHANTANU
SHANKARSA
DHUDUM
Date:
2023.03.14
12:02:46
+0530

Reliance General Insurance)
Company Limited,)
Branch at Lucky Chowk, Solapur)Appellant

Versus

1. Rashmi w/o Ravindranath Kulkarni)
Age: 53 years, Occ: Household,)
2. Sarvesh Ravindranath Kulkarni)
Age: 31 years, Occ: Service,)
3. Neeta w/o. Madhukar Kulkarni)
Age: 80 years, Occ: Household)
All residing at Amarut Nagar,)
Krishna Building, Block No.11,)
Vijapur Road, Solapur)
4. Sadek Maheboob Shaikh)
Age: 42 years, Occ: Business,)
Residing at Behind Shahinshawli)
Daga, Beed, Taluka Beed,)
District: Beed.)Respondents

Mr. Pandit Kasar for the Appellant.
Mr. R. S. Alange for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 24th FEBRUARY 2023.

JUDGMENT:

1. The issue involved in this Appeal is at the time of accident driver of offending vehicle was not holding the effective and valid driving license.

2. It is contention of learned counsel for the Appellant that there was breach of terms and conditions of Insurance Policy, as at the time of accident, driver of the offending vehicle was not holding effective and valid driving license, but this fact is not considered by the Tribunal and awarded the compensation which is improper. The learned counsel further submits that matter be remanded back to the Tribunal to give opportunity to the Appellant to lead the evidence in respect of driving license.

3. The learned counsel for the Respondents/Claimants submits that Appellant has not examined any witness to prove their contentions that driver was not holding effective and valid driving license at the time of accident. In fact the claimants have produced xerox copy of driving license of the offending truck driver before the Tribunal. Which shows that the driving license was valid from 29 December, 2016 to 28 December, 2019.

4. The learned counsel further submits that the accident was occurred on 11/01/2019. It shows the driver was holding valid driving license. Hence, requested to dismiss the Appeal.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'), while dealing with the issue of driving license. The Tribunal has observed that Appellant has not examined any witness. To prove that driver was not holding effective and valid driving license, at the time of accident, the claimants have produced the xerox copy of driving license of offending truck driver with list Exhibit-4/18. It shows driver was holding transport license since 29 December, 2016 to 28 December, 2019. The claimants have further placed on record copies of RC book and fitness certificate of offending vehicle with list at Exhibit-4. The Appellant has not denied and disputed the said documents, on that basis the Tribunal has held that the Appellant failed to prove breach of terms and conditions of insurance policy. In my view, Appellant had opportunity to lead evidence but Appellant did not lead any evidence in respect of their contentions before the Tribunal. Moreover claimants have produced xerox copy of the driving license of the driver which was not disputed by the Appellant

before the Tribunal. Hence, I do not find merit in the contention of learned counsel for the Appellant that at the time of accident driver of offending vehicle was not holding effective and valid driving license. I am not inclined to remand the matter as prayed by learned counsel for the Appellant on the ground that, it appears from record that sufficient opportunity was given to the Appellant to examine the witness. In spite of that Appellant has not examined any witness before the tribunal, xerox copy of driving license was already produced on record which was not disputed by the Appellant. Hence, appeal is devoid of merit and I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the Motor Accident Claims Tribunal, Solapur along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

5. All pending application stands disposed of.

(S. G. DIGE, J.)