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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 238 OF 2019

National Insurance Company Ltd.
Through the Manager, R/o.174 South Kasaba,
Subharai Towers, 4th Floor, Datta Chowk, Solapur,
Through its Mumbai Regional Office- II,
5th Floor, Sterling Cinema Building,
Murzban Street, Fort, Mumbai – 400001

... Appellant

Versus

1. Smt. Anita Jayant Bagal
Age: 28 Years, Occu.- Housewife,
2. Kum. Shravan Jayant Bagal
Age: 05 Years, Occu.- Student,
3. Kum. Manthan Jayant Bagal
Age: 07 Years, Occu.- Student,
Respondent No.2 & 3 being Minor, through
their biological mother guardian.
4. Sou. Sunanda Saudagar Bagal
Age: 55 Years, Occu.- Household,
5. Shri. Saudagar Bhagwan Bagal
Age: 61 Years, Occu.- Agriculturist,
All R/o. Bagal Wasti, Village Ghoti,
Taluka Madha, District Solapur

... Respondent Nos. 1 to 5
(Original Claimants)

6. Shri. Vishnu Maruti Tarange
Age: Major, Occu.- Agriculturist,
R/o. A/p. Papanas, Tal- Madha,
Dist. Solapur.

... Respondent No. 6
(Original Opp. No. 1)

7. Shri. Chandrakant Pralhad Jagtap
Age: Major, Occu.- Driver
R/o. At Post Mhaisgaon, Tal- Madha,
Dist. Solapur.

... Respondent No. 7
(Original Opp. No. 2)

Ms. Harshada M. Rane for the Appellant.

Mr. Nitin Kalshetti a/w. Mr. Sagar Tambe for Respondent Nos. 1 to 5.

Mr. Mohansingh Rajput a/w. Mr. Sachin Amulkar for Respondent No. 6 & 7.

Mr. Nikhil Mehta as Amicus Curiae.

CORAM : **RAJESH S. PATIL, J.**

RESERVED ON : **3 NOVEMBER, 2023**

PRONOUNCED ON : **29 NOVEMBER, 2023**

JUDGMENT :

1. This First Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, by the Insurance Company (Original Opponent No. 3) challenging the Judgment and Award dated 3 March 2015 passed by the MACT, Solapur in MACP No. 54/2013.

FACTS :

2. On 31 July 2012 at 09:00 a.m., one Mr. Jayant Bagal was proceeding to attend his duty from Kurduwadi on his motorcycle. When he reached near Hotel Vaishali on Kurduwadi Barshi Road, one Indica Car bearing Registration No. MH 09 TC 246 (for short

“offending vehicle”), coming from the opposite direction, collided with the motorcycle of Jayant Bagal. In the said accident, Jayant Bagal died on the spot (for short “the deceased”).

3. The Respondent Nos. 1 to 5 (Original Claimants) in the present First Appeal are legal heirs of the deceased, who filed Claim Petition No. MACP No. 54/2013, before the MACT, Solapur, claiming compensation of Rs. 35,50,000/-, with interest at current rate from the date of the accident till realization. The claim petition narrated that, deceased, aged 37 years, was serving as a Civil Engineer and was in permanent employment with Vitthal Corporation Limited, Mhaisgaon, Taluka Madha, Dist. Solapur, drawing monthly salary of Rs. 23,000/-.

4. The Respondent Nos. 6 and 7, who are owner and driver respectively of the offending vehicle, appeared in the matter and filed their written statement and stated that the deceased was driving at a high speed and in a rash and negligent manner, and as the deceased lost the control of his motorcycle, he turned to the wrong side on the road and dashed against the offending vehicle, therefore there was no fault on part of the driver of the Indica Car.

5. The Appellant herein, being the Insurer of Indica Car, appeared before the MACT, Solapur as Opponent No. 3 and filed its written statement. The Insurer denied the allegations made by the claimants and stated that the Indica Car was driven in moderate speed and it was on the correct side of the road. It was only because the deceased was driving his motorcycle in rash and negligent manner and at a very high speed, thereby lost control of the motorcycle and dashed his motorcycle to the offending vehicle. It was further stated that the insured Indica Car did not bear Registration on the date of the accident i.e., 31 July 2012 therefore, the Insurance Company is not liable to pay any compensation to the legal heirs of the deceased.

6. On behalf of the Original Claimants, the Claimant No. 1 i.e., the widow of the deceased, entered the Witness Box and gave her evidence. She produced on record the certified copy of the F.I.R. lodged against the driver of offending vehicle, spot panchnama. The Claimant also examined one, Mr. Dnyandeshwar Ganpat Dhanoke, as Witness No. 2 and Bhaskar Abhimanu Ghavane as Witness No. 3. Whereas on behalf of the Appellant Insurance Company and the Respondents owner and driver of the offending

vehicle, nobody entered the Witness Box to prove their case.

7. After hearing the parties and considering the evidence on record, the Member, MACT Solapur, passed his Judgment and Award dated 3 March 2015, thereby directing the Appellant Insurance Company, the owner and driver of the offending vehicle to jointly and severally pay the total amount of Rs. 39,00,000/- (Rupees Thirty-Nine lakhs) with interest at the rate of 9% per annum from 14 March 2013 till realization, together with cost within two months from the date of the order.

8. Being aggrieved by the impugned Judgment and Award dated 3 March 2015, the Appellant Insurance Company filed the present Appeal under Section 173 of the Motor Vehicles Act.

SUBMISSIONS :

9. Advocate Ms. Harshada Rane appeared on behalf of the Appellant Insurance Company and made her submissions.

9.1. Ms. Rane submitted that the offending vehicle was not registered on the date of the accident, therefore, there was a breach of the policy and the Insurance Company cannot be held liable to pay to the Claimants.

9.2. Ms. Rane further submitted that evidence has not been led on behalf of owner of the offending vehicle therefore, this Court should not look into any arguments made by the owner on this behalf.

9.3. Ms. Rane submitted that the offending vehicle was driven on the road without registration on the date of accident i.e., on 31 July 2012, therefore, there was a clear breach of the Terms and Conditions of the Insurance Policy. And the temporary certificate of registration of the offending vehicle was valid only up to 11 June 2012.

9.4. Ms. Rane submitted that even though the findings are recorded of *pay and recover* in Paragraph No. 16 of the impugned Award, the said fact is not reflected in the operative part of the Award.

9.5. Ms. Rane referred to two judgments of the Supreme Court to support her submissions as regards to the issue of non-registration of the insured vehicle, amounting to breach of the policy:

1. ***United India Insurance Company Limited Vs. Sushil Kumar Godara***, reported in ***(2021) 14 SCC 519***.

2. *Narindar Singh Vs. New India Assurance Company Limited*

reported in ***(2014) 9 SCC 324.***

9.6. Ms. Rane further submitted that on the issue of *pay and recovery*, which is fundamental breach of the policy, she relies upon the Judgment of Supreme Court in ***National Insurance Co. Ltd. Vs. Swaran Singh*** reported in ***2004(3) SCC 297.*** She further submitted that the said law with reference to *pay and recover* has been followed by Supreme Court after ***Swaran Singh (Supra)*** in the Judgment of ***Shamanna Vs. Oriental Insurance Co. Ltd.*** reported in ***(2018) 9 SCC 650*** and ***Amrit Paul Singh Vs. Tata AIG General Insurance Co. Ltd.*** reported in ***(2018) 7 SCC 558.***

9.7. Ms. Rane therefore submitted that this is a fit case for *pay and recover* and an order of *pay and recovery* will suffice the purpose of the Insurance Company.

10. On the other hand, Mr. Nitin Kalshetti appeared on behalf of the original claimants and made his submissions.

10.1. Mr. Kalshetti submitted that the Judgment and Award passed by the Member, MACT, Solapur is according to law and no interference of this Court is required.

10.2. Mr. Kalshetti submitted that even if the impugned Award is

modified to *pay and recover*, the Claimants would have no objections to the same, as the claimants are only concerned with the claim amount; and even though the Insurance Company pays them and then recovers it from the owner of the offending vehicle, the Claimants would not have any objection to the same.

10.3. Mr. Kalshetti referred to the Judgment of Supreme Court in ***National Insurance Co. Ltd. v. Swaran Singh*** reported in **2004(3) SCC 297**, and laid emphasis on Para Nos. 23, 24 and 25 of the said judgment and took me through the said paras.

“23. Concededly, different types of insurance covers are issued containing different nature of contracts of insurance. We are, however, in this batch of cases mainly concerned with third-party right under the policy. Any condition in the insurance policy, whereby the right of the third party is taken away, would be void.

24. Indisputably, such a benefit to a third party was provided under the statute keeping in view the fact that the conditions in the assured’s policy may be of little or no effect in relation to a claim by a person to whom an assured was under a compulsorily insurable liability.

25. In this context, it is necessary to consider as to what is a third-party right. A third-party claim arises when a victim of any accident suffers a bodily injury or death as a result thereof or his property is damaged. An accident is not susceptible to a very precise definition.”

[Emphasis supplied]

11. Mr. Rajput appeared on behalf of Respondent Nos. 6 and 7 who are the owner and driver of the offending vehicle respectively, and made his submissions.

11.1. Mr. Rajput submitted that no case is made out for joint and several liability, and admittedly, the offending vehicle was covered with Insurance Policy on the date of the accident, therefore, only the Insurance Company was liable to pay to the Claimants.

11.2. Mr. Rajput further submitted that the offending vehicle was first having temporary registration No. MH 09 TRBT 374 and thereafter the temporary registration was extended, and the number MH 09 TC 246 was given to the offending vehicle. Therefore, on the date of accident, the offending vehicle had a valid registration number, though temporary.

11.3. Mr. Rajput further submitted that the Insurance Policy is assigned to the vehicle on the basis of Chassis Number and not on the basis of Registration Number of the vehicle, therefore, there is no substance in the submissions made by the Insurance Company. Mr. Rajput further submitted that the registration number of the vehicle is only for identification purpose. He further submitted that the conditional breach does not exonerate the Insurance Company.

11.4. Mr. Rajput further referred to Section 149 of Motor Vehicles Act. He submitted that the Section itself is clear, hence, the liability of the Insurance Company persists.

11.5. Mr. Rajput submitted that there is no merit in this Appeal and the Appeal should be dismissed. Mr. Rajput relied upon the Judgment of the Supreme Court in the case of *IFFCO Tokio General Insurance Company Limited Vs. Geeta Devi* reported in *2023 SCC OnLine SC 1398*.

11.6. Mr. Rajput further submitted that the Insurance Company has not mentioned as to which clause of the Insurance Policy was breached, neither the terms and conditions of the Insurance Policy have been brought on record by way of evidence before the MACT, therefore, there is no merit and the First Appeal should be dismissed.

ANALYSIS AND CONCLUSION:

12. In the present proceedings, as far as rash and negligent driving is concerned, the same has been answered in favour of the Claimants and it has been held that the driver of the offending vehicle was negligent while driving the offending vehicle i.e., Indica Car. Evidence of Claimant No. 1 has been led to that effect

and the spot panchnama has also been relied upon which is an Exhibited document. The MACT, Solapur has answered the issue in favour of the Claimant holding that the rash and negligent driving was done by the driver of the offending vehicle. I am in consonance with the finding of the Member, MACT, Solapur, about rash and negligent driving, and I conclude that the same is answered rightly in favour of the claimants.

13. As regards the compensation, the claimants have examined two witnesses, one Mr. Dhanoke who is the Security Officer, and another Mr. Gavhane, who is the Account Officer of the Company in which the deceased was working. The Salary Certificate of the deceased is produced on record, and on the basis of which, the claimants have proved the last salary drawn by the deceased. And on the basis of evidence and documents on record in form of Salary Certificate, the Member, MACT has arrived at figure of compensation of Rs.39,00,000/- (Rupees Thirty-Nine lakhs).

14. The present First Appeal is filed only by the Insurance Company whose main argument is that there is a breach of the Insurance Policy as the vehicle was driven on road without registration, even though the Insurance Policy was valid. As there

was breach of the Policy on the date of accident, the Insurance Company is not liable.

15. It is a matter of record that as far as the Insurance Company is concerned, they have filed their written statement, however, no evidence is led on behalf of the Insurance Company to prove their case about there being a breach of the policy.

16. Mr. Nikhil Mehta, appointed as Amicus Curiae in this matter to assist this court, has invited my attention to the relevant sections of the Motor Vehicles Act. Mr. Mehta submitted that in the Insurance Policy, the Terms and Conditions of every Insurance Company can be different, therefore according to him, the Terms and Conditions of the Insurance Policy has to be gone through in order to conclude that there is a breach. Mr. Mehta further submitted that the first thing to be done by the Insurance Company is that the Terms and Conditions of the Insurance Policy should be brought on record, thereafter, the same must be exhibited and further evidence would have to be led to prove that there was breach of those Terms and Conditions of the Insurance Policy. Mr. Mehta has first shown me Section 39 of the Motor Vehicles Act, which reads as under:

*“39. **Necessity for registration** — No person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner:*

Provided that nothing in this section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.”

[Emphasis Supplied]

17. Mr. Mehta also invited my attention to Section 192 of the Motor Vehicles Act, which reads as under:

*“192. **Using vehicle without registration**—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second or subsequent offence with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both:*

Provided that the court may, for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injuries or for the transport of food or materials to relieve distress or of medical supplies for a like purpose:

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.”

[Emphasis Supplied]

18. Mr. Mehta submitted that there is criminal liability if a vehicle without registration is driven on the road.

19. Mr. Mehta further submitted that the Insurance Policy of the vehicle is on the basis of Chassis Number of that vehicle. Mr. Mehta also submitted that a vehicle cannot be driven on the road without having valid Insurance Policy.

20. Therefore, Mr. Mehta’s submission concisely is that a vehicle cannot be driven without having an Insurance Policy. Mr. Mehta submitted that the Terms and Conditions of the Insurance Policy are important, and in order to prove breach, evidence would have to be led to that effect by the Insurance Company to prove that there is a breach of the Insurance Policy.

21. I have carefully gone through Sections 39 and 192 of the Motor Vehicles Act. The Judgment of Supreme Court referred to by

the Advocate for the Insurance Company in case of ***Sushil Kumar Godara*** (*Supra*) arises out of Consumer Disputes Redressal Commission. In the said proceedings, the Court had held that there was fundamental breach of the Terms and Conditions contained in the Policy, as there was theft of the vehicle when the period of temporary registration of the said vehicle had expired.

22. So far as Judgment referred by Insurance Company of Supreme Court in case of ***Narindar Singh*** (*Supra*), the same also arises out of Consumer Dispute Redressal Commission. In the said proceedings, the Vehicle registration had expired when it met with an accident and the vehicle got damaged. The Insurance claim was for the repair of the said vehicle assessed at Rs. 2,60,845/- (Rupees Two Lakh Sixty Thousand Eight Hundred and Forty-Five). The Insurance Company opposed the claim on the ground that the driver of the vehicle did not possess a valid driving license and the vehicle's temporary registration had expired. The Supreme Court held that nothing was brought on record by the owner of vehicle to show that after the temporary registration had expired, he applied for permanent registration or made any application for extension period of temporary registration on ground of some special

reasons. Therefore, the Supreme Court held that using a vehicle on public road without any registration is not only an offense punishable under Section 192 of the Motor Vehicles Act, but also a fundamental breach of the Terms and Conditions of the Policy.

23. Both these Judgments only signify that driving a vehicle on public road without any registration is an offence under Section 192 of the Motor Vehicles Act and also amounts to a fundamental breach of Terms and Conditions of the Insurance Policy. In the case of Sushil kumar Godara, the facts were pertaining specifically to the theft of the vehicle and in the case of Narendra Singh, the facts were pertaining to the damage of the vehicle. Where as, in the present proceedings there is a loss of human life in a motor accident and therefore, Claimant filed the Claim Petition under the provisions of Motor Vehicle Act. Hence, it runs on completely different footing. The statute Consumer Protection Act and Motor Vehicles Act are quite different. Therefore, the findings of these two Supreme Court Judgments do not help the Appellant.

24. It is matter of record that the Insurance Company has not led any evidence to prove its case, about breach of Terms and Conditions, so also, they have not even brought the Terms and

Conditions on record. In order to prove breach of the Terms and Conditions of the Insurance Policy, it was paramount to bring the same on record and consequently exhibit it and then the next step was to lead evidence to that effect to prove the breach of a particular Term and/or Condition, however, the Appellant Insurance Company has miserably failed to do so. Therefore, I hold that the Insurance Company has failed to prove that there is a breach of the Terms and Conditions of the Insurance Policy.

25. The Judgment of ***Geeta Devi (Supra)*** referred by the owner of the vehicle is squarely applicable to the present case. The Paragraph No. 15 of ***Geeta Devi (Supra)*** judgment is reproduced below:

“15. As already pointed out supra, once a seemingly valid driving licence is produced by a person employed to drive a vehicle, unless such licence is demonstrably fake on the face of it, warranting any sensible employer to make inquiries as to its genuineness, or when the period of the licence has already expired, or there is some other reason to entertain a genuine doubt as to its validity, the burden is upon the insurance company to prove that there was a failure on the part of the vehicle owner in carrying out due diligence apropos such driving licence before employing that person to drive the vehicle. Presently, no evidence has been placed on record whereby an inference could be drawn that the deceased vehicle owner ought to have gotten verified Ujay Pal’s driving licence. Therefore, it

was for the petitioner-insurance company to prove willful breach on the part of the said vehicle owner. As no such exercise was undertaken, the petitioner-insurance company would have no right to recover the compensation amount from the present owners of the vehicle. The impugned order passed by the Delhi High Court holding to that effect, therefore, does not brook interference either on facts or in law.”

[Emphasis supplied]

26. Therefore, there is no merit in the present First Appeal and there is no need for interference with the Judgment and Award passed by the Member, MACT, Solapur.

27. Hence, the present First Appeal is dismissed. No cost.

28. Before parting with the Judgment, I would like to extend special thanks to Mr. Nikhil Mehta, learned Advocate, who was appointed as an *Amicus Curiae* by this Court, who shed light on the relevant sections of the Motor Vehicles Act.

(RAJESH S. PATIL, J.)