IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 813 OF 2018

Reliance General Insurance Company Limited
Through its Corporate Office
4th Floor, Chintamani Avenue,
Off Western Express Highway,
Next to Virwani Industrial Estate,
Goregaon (E), Mumbai 400 063 (Ori.Opponent No.2)
...**Appellant**

Versus

1. Ramesh Shankar Gowda,
Age : 44 years,
R/at : A/3, 611, Vasundhara Lok Rachina,
Amar Nagar, Mulund West, Mumbai (Ori. Applicant)

2. Bharatlal K. Gupta
R/o. Ratan Sadan, 5th Floor,
Room No.91, Mumbai 400 011. (Ori.Opponent No.1)
...**Respondents**

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Ms. Poonam Mital for the Appellant.

Mr. Nitesh Bhutekar a/w Mr. Aniket Nangare for Respondent No. 1.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2023.

<u>JUDGMENT</u> :

1. The issue involved in this Appeal is pay and recovery order passed by the Motor Accident Claim Tribunal, Mumbai (for short 'the Tribunal').

2. It is the contention of the learned Counsel for the Appellant that before the Tribunal it was proved that the driver of offending vehicle was not holding a valid and effective driving license. To prove the defense, the Appellant has examined 3 witnesses. The Tribunal has held that the driver of the offending taxi was not holding a valid and effective driving license and there is a breach of terms and conditions of the Insurance Company. But the Tribunal has passed pay and recovery order, which is not proper, hence, requested to allow the Appeal.

3. Learned Counsel for the Respondent No.1-Claimant submits that the driver of the offending taxi was holding driving license, but it was not renewed on the date of accident. The order passed by the Tribunal is proper, hence, requested to dismiss the Appeal.

4. I have heard both learned Counsel. Perused the Judgment and order passed by the Motor Accident Claims Tribunal (for short ‘the Tribunal’).

5. The issue involved in this Appeal is pay and recovery order when the driver of offending vehicle was not holding a valid and effective driving license, at the time of accident.

6. While dealing with this issue, the Tribunal has observed that, to prove the case, the Appellant examined 3 witnesses. But from the extract of driving license at Exh.45, last validity of the above mentioned driving license is shown to be 25th December, 2011. It means that on the date of accident, which occurred on 17th November, 2013, the license was not renewed. At the same time, it is admitted by the DW-1 Sharda Hedau and DW-2 Priyank Shah that there is no document on record to show that the said driver was disqualified for holding a license. Though the breach of terms and conditions of the Insurance Policy is established by the insurer, the fact remains that the driver of the offending vehicle was not disqualified for holding a driving license. Hence, it is not proved that mere holding an unrenewed driving license contributed to the accident or was the main

cause of the accident. Considering this fact, the Tribunal has passed pay and recovery order.

7. Learned Counsel for the Respondent No.1-Claimant relied on the Judgment of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Versus Swaransing and Others 2004 ACJ 1 (S.C.)*** and ***S. Iyyapan Versus New India Insurance Co. Ltd and Ors. 2013 ACJ 1944.***

8. I do not find any infirmity in the observations of the Tribunal, as it has been proved that the driver of the offending vehicle was possessing a license, but it was not renewed. On that basis the pay and recovery order is passed, which is proper. In view of above, I pass following order :

ORDER

i. Appeal is dismissed. No order as to costs.

ii. The Claimant-Respondent No.1 is permitted to withdraw the deposited amount, along with accrued interest thereon.

iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon.

iv. The parties are at liberty to withdraw the amount, as per rules.

v. Appeal is disposed of.

vi. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)