IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 167 OF 2023

	Bajaj Allianz General Insurance Company Ltd. By and through, Divisional Officers, Address : J-E, Plaza, Airport Road, Yerwada, Pune	]]]	Appellant
	Versus		
1	Ashok Rau Suryawanshi Age :- 68 Years, Occu :- Agriculature	]]	
2	Bharti Ashok Suryawanshi Age :- 64 Years, Occu:- Household Res. No.1 and 2 are residing at Wangi, Tal:- Kadegaon, District :- Sangli	]]]]	
3	Suraj Bhaskar Mahadik Age:- Adult, Occu:- Vehicle Business R/at. Sumangal Nagar, Karve Naka Karad, Tal:- Karad, District :- Satara	]]]]	Respondents

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Mr. Sarthak S. Diwan, Advocate for the Appellant.
Mr. Girish Agrawal a/w. Mr. Shubham Jangam and Ms. Naina Boraste, Advocate for Respondent Nos. 1 and 2.
Mr. Vaibhav R. Gaikwad a/w. Mr. Atharva R. B., Advocate for Respondent No.3.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 30th JANUARY, 2024.

JUDGMENT. :

1. The issue involved in this appeal is liability fixed on the insurance company.

2. It is contention of learned counsel for the appellant that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence. The licence was not renewed at the time of accident and it was renewed after the accident. But this fact is not considered by the Tribunal and has fixed liability of paying compensation on the Insurance Company, though there was breach of terms and conditions of Insurance policy which is not proper, hence requested to allow the appeal.

3. It is contention of learned counsel for respondent No.3 / owner of the vehicle that the Tribunal has considered all the aspects while passing the order and on that basis Judgment and Order is passed. No interference is required in it. Learned counsel further submitted that it has come on record that driver of offending vehicle was holding effective and valid driving licence but it was not renewed at the time of accident and it was renewed after the accident, it does not mean that driver was not skilled driver. Learned counsel further submitted that no notice was given to the owner of the vehicle by the appellant/Insurance company and no evidence was placed on record, Insurance Company failed to prove that there was breach of terms and conditions of the Insurance Policy. Hence, requested to dismiss the appeal.

4. Learned counsel for the respondent Nos. 1 and 2/claimants submitted that the Tribunal has awarded consortium amount on lower side it be awarded and appropriate order be passed.

5. I have heard all the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Satara (for short "**the Tribunal**"). It is contention of learned counsel for the appellant/Insurance Company that at the time of accident driver of offending vehicle was not holding effective and valid driving licence. To prove their defence the Insurance Company have examined PW-1 Aditya Tambekar, Legal Adviser at Exhibit-59. He has stated that at the time of accident driver of offending truck Prashank Kale was not holding driving licence. In support of evidence of DW-1, the Insurance Company have examined officer from R.T.O. office Mr. Amit Dhule at Exhibit-58. He has stated that Prashant Kale was holding driving licence of light motor vehicle from 18.05.2009 and transport vehicle from 25.04.2011. The driving licence of transport is required to renew in every three years. The said Prashant Kale renewed the driving licence of transport on 16.03.2015. The owner of vehicle has not examined any witness in support of his case nor written statement was filed by the owner of the vehicle. While dealing with the issue of licence, the Tribunal has observed that the accident occurred on 03.08.2014. On the date of accident, Prashant Kale was driving transport vehicle. He was originally issued transport driving licence on 25.04.2011 and the same was renewed on 16.03.2015. On the date of accident his driving licence of transport was not renewed. However, the said fact cannot be ignored that said Prashant Kale was having valid driving licence of transport issued on 25.04.2011 and subsequently his driving licence is renewed on 16.03.2015. It shows that his act of not renewing driving licence on 16.03.2015. Therefore, it cannot be said that he was not holding driving licence or knowledge of proper driving at the time of accident. Merely on the date of accident his licence was not renewed. It cannot be said that he was not knowledge of driving. Therefore, it cannot be said that there was breach of terms and conditions of insurance policy. Hence, the Tribunal has directed the Insurance Company to pay the compensation. I am unable to understand the observations of the Tribunal as admittedly at the time of accident there was no renewal of the licence of the driver of offending truck. The Hon'ble Apex Court in the case of ***Pappu and Ors. versus Vinod Kumar Lamba and Anr. (2018) 3 SCC 208*** has held that if a driver of offending vehicle did not have valid driving licence at the time of accident, the insurer to pay claim amount awarded by the Tribunal to the claimant and recover the same from the owner of the vehicle in accordance with law. The ratio laid down by the Hon'ble Apex Court is squarely applicable to the present case.

I have gone through the case law submitted by learned counsel for respondent No.3 - owner of the vehicle ***Iffco Tokio General Insurance***

Co. Ltd. Versus Geeta Devi and Others. The facts in cited case and case in hand are difference, hence not applicable. In view of above, I pass following order:

ORDER

i. The appeal is allowed.

ii. The appellant/Insurance Company shall deposit compensation amount awarded by the Tribunal along with accrued interest thereon.

iii. The appellant is at liberty to recover the said compensation amount along with accrued interest from owner of vehicle i.e. Respondent No.3.

iv. The claimants are permitted to withdraw the compensation amount deposited along with accrued interest thereon.

v. Statutory amount along with accrued interest thereon be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.

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

6. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)