IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.611 OF 2018

	Reliance General Insurance Co. Ltd. Thane Divisional Office, Malhar Talkies, Naupada, Thane (W) Insurer of Temp Bearing No.MH-02-YA-6742		….Appellant
	Versus		
1.	Sanjay Krishna Chauhan Age-20 years, Occ : Nil R/at-H.No.7708, Sai Nagar, MIDC Road, Rabale, Ghansoli, Navi Mumbai		
2.	Jayanth K. Yadav R/at : Nalanda CHS Akruti Road, Kandivali (E), (Owner of Tempo Bearing No.MH-02-YA-6742)		….Respondents

Ms. Shalini Shankar, Advocate for the Appellant.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th APRIL, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant-Insurance Company that at the time of the accident, the driver of the offending vehicle was not holding valid and effective driving license. There was

breach of terms and condition of the insurance police. To prove it, the appellant has examined witness but the Tribunal has not considered the evidence produced on record and has passed the impugned judgment and order, hence, requested to allow the appeal.

3. Though respondents are served, none present for the respondents. The appeal is of the year 2018, hence, I am deciding this appeal on merit.

4. Heard learned counsel for the appellant, perused the judgment and order passed by Motor Accident Claims Tribunal, Thane (for short "the Thane").

5. To prove its defense, the appellant-Insurance Company has examined DW1- Khanjan Joshi, Legal Manager of the Insurance Company. He has stated that the driver of the offending vehicle failed to provide the driving license before them, hence, the investigator was appointed to obtain information about the driving license of the driver of the offending vehicle and as per the investigation report, the Regional Transport Office, Jaunpur, has not issued any license to Durgesh Yadav, driver of the offending vehicle, therefore, there is breach of terms and condition of the insurance policy.

5.1. The appellant-Insurance Company has examined DW2-Sachin Chalke, Area Manager of the Insurance Company. He has stated that they had appointed M/s. Shyam and Company as investigator to obtain information in respect of the driving license of the driver of the offending vehicle and as per the report submitted by the investigator, the driving license of Durgesh Yadav is fake and there is breach of terms and condition of the insurance policy.

5.2. While dealing with the issue of driving license, the Tribunal has observed that the Insurance Company though filed investigator's report along with xerox copy of the driving license and accident information report, these documents are not duly proved by examining the investigator as well as concerned Regional Transport Officer. Hence, the Tribunal has observed that the Appellant-Insurance Company failed to prove burden lying on them and there is no breach of terms of policy. I do not find infirmity in it. In my view, the witness examined by the appellant – Insurance Company had given evidence on the basis of investigator's report but the investigator was not examined to prove the investigation report. Moreover, the compensation amount is below Rs.1,00,000/- i.e. Rs.97,452/-.

6. In view of above, I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.

3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)