

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1185 OF 2019

The New India Assurance Co. Ltd.
 Having its Mumbai Regional Office-1,
 At New India Bhavan, 34-38, Bank Street, Fort,
 Mumbai-400 023

.. Appellant

Versus

1. Laxmi Vaijanath Bhandari
 Age : 28 yrs, Occupation-Household
2. Pushpa Vaijanath Bhandari
 Age : 13 yrs, Occupation-Education
3. Aarti Vaijanath Bhandari
 Age : 11 years, Occupation – Education
4. Tushar Vaijanath Bhandari
 Age : 6 years, Occupation – Education
5. Tanuja Vaijanath Bhandari
 Age : 2 years
 [All residing at Post Rase (Chakan) Taluka-Khed,
 Rajgurunagar, District – Pune.
6. Kallayya Lachmayya Bhandari
 Age : 60 years, Occupation – Labour,
 Residing at Post – Rumungud, Taluka – Chincholi,
 District-Gulbarga, Karnataka
7. Harishchandra Jeevanlal Chaudhari
 Age : 29 years, Occupation-Driver,
 Residing at Nasaribade, Tal-Nandga,
 District – Ajmer, Rajasthan
 (Abated vide Reg.(J-II) Court's Order dated
 15.11.2017.
8. Basantkumar Bhomsingh Choudhary
 Age : Adult, Occupation – Transport,
 Residing at Jat Bairod, Tal – Manesar,
 District – Alwar, Rajasthan
 (Dismissed vide Reg. (Jud-II) Order Dt.
 15.11.2017

(Orig.Claimants)
 .. Respondents

.. (Orig.Opp.No.1)

.. (Orig.Opp.No.1)

.....
Ms. Urmila K. Sanil, Advocate for the Appellant.
Ms. Tejas J. Kapre i/b. J.S.Kapre, Advocate for Respondent Nos. 1 to 5.
.....

CORAM : SHIVKUMAR DIGE, J.
DATE : 10th JANUARY, 2024.

JUDGMENT :

1. The issue involved in this appeal is at the time of accident driver of offending vehicle was not holding effective and valid driving licence.
2. It is the contention of learned counsel for the appellant/Insurance Company that at the time of accident driver of offending vehicle was not holding driving licence. The offence was registered against the driver for not holding valid driving licence but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.
3. It is the contention of learned counsel for the respondents/claimants that to prove the fact that the driver of offending vehicle was not holding effective and valid driving licence at the time of accident, no evidence was produced on record. The order passed by the Tribunal is legal and valid and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short “**the Tribunal**”). In respect of the issue of driving licence of the driver of offending vehicle, while dealing with this issue the Tribunal has observed that no evidence was produced on record to prove the said fact. The appellant/Insurance Company harping on the point that the offence under Section 3 and 181 of Motor Vehicle Act was registered against the driver of offending vehicle for not holding driving licence, but the Investigating Officer of said crime was not examined to prove the said fact. It was onus on the Insurance Company to prove the defence taken by them. Hence, I do not see merit in the contention of the learned counsel for the appellant that driver was not holding valid licence.

5. In view of the above, I pass following order:

ORDER

- (i) The appeal is dismissed. No order as to cost.
- (ii) The claimants are permitted to withdraw the compensation amount along with accrued interest thereon deposited by the appellant.
- (iii) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.

(iv) Pending civil/interim applications, if any, stand disposed
of.

6. The appeal is disposed of.

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2024.01.20
10:35:09 +0530

(SHIVKUMAR DIGE, J.)