IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 232 OF 2023

The Reliance General Insurance Co. Ltd. }
4th Floor, Chinamani Avenue, Near Virvani }
Industrial Estate, Opp. Western Express }
Highway, Goregaon (E), Mumbai-400 063 } **...Appellant**

Versus

1. Shabana Iqbal Sayed }
Age-55 years, Widow of the deceased }

2. Mr.Ashraf Iqbal Sayed }
Age-22 years, Son of the deceased }

3. Miss Farzana Iqbal Sayed }
Age-19 years, daughter of the deceased }

4. Mr.Ismail Iqbal Sayed }
Age-25 years, son of the deceased }
Mentally retarded so through mother and }
Next Friend Mrs.Shabaha Tqbal Sayed }

5. Mrs.Kherunisa S. Sayed }
Age-80 years, Mother of the deceased }
All R/o Room No.NXB 1/1-5, Opp. Yadav }
Kirana Store, Surya Nagar, Behind Vitrum } (Org. Applicant)
Glass, Vikroli (W), Mumbai-400083 }

6. Mr.Jagganath Pandurang Shinde } (Org. Opp.
Radha Sadan Chawl No.8, Gaodevi Road, } No.1.)
Tulsi Pada, Bhandup (W), }
Mumbai-400 078. } **....Respondents**

Mrs.Kalpana Trivedi, for the Appellant.
Mr.Pramod Purav i/b Mr.Niketan Nakhawa, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

. The issues involved in this Appeal are two vehicles were involved in the accident and driver of the offending vehicle was not holding valid and effective driving license at the time of the accident.

2. It is contention of the learned counsel for the Appellant that, the deceased was traveling in the rickshaw. The driver of the said rickshaw applied breaks suddenly. Due to which rickshaw turned turtle and dashed against one motor car. There was involvement of the two vehicles in the said accident, but the Tribunal has not considered this fact. The learned counsel further submitted that driver of the offending rickshaw was not holding valid and effective driving license at the time of the accident. To prove the defense, witness is examined by the

Appellant. The charge-sheet for not having valid driving licenses was filed against the driver of the offending rickshaw but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent's-Claimant's that, the deceased was occupant of the offending rickshaw. The insurance of the occupant was covered. The learned counsel further submitted that offence was registered against the driver of the offending rickshaw. The accident occurred due to sole negligence of the driver of the offending rickshaw. The learned counsel further submitted that to prove the fact that driver of the offending vehicle was not holding effective and valid license, no person from RTO Office was examined. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mumbai.

5. It is Claimant's case that on 19th February 2016 at about 18.20 hours, the deceased was traveling as a bonafied

passenger in auto rickshaw bearing No.MH-03-BN-3910 from Vitrum Glass Company towards Vikhroli Railway Station. The said rickshaw was driven in fast speed and in a rash and negligent manner. When the said rickshaw reached opposite Cipla Company Main Gate, on LBS Marg, Vikhroli, the driver of the rickshaw applied immediate urgent brakes due to which the driver lost his control over the vehicle and it turned turtle and dashed one motor car bearing No.MH-06-AN-5492. The deceased sustained injuries, he died while taking treatment. Offence was registered against the driver of the offending rickshaw. The autorickshaw was insured with Appellant-Insurance Company. To prove the negligence of the driver of autorickshaw, the Claimant's have relied on police papers.

6. It is contention of the learned counsel for the Appellant that, other vehicle was involved in the accident. In my view, the offence was registered against the driver of the offending rickshaw. Moreover, Insurance was covered for the occupant of the rickshaw. The deceased was occupant in rickshaw. Hence, deceased is entitled for compensation from the

Appellant Insurance Company.

7. To prove that driver of offending rickshaw was not holding effective and valid driving license at the time of the accident, the Appellant has examined their Officer Mrs.Asmita Sawant at Exhibit-36 Associate Legal manager in Reliance General Insurance Company. She has stated that at the time of the accident driver of the offending vehicle was not holding valid driving license due to which he has been chargesheeted under Section 3 of the M.V. Act by the Police. The charge-sheet is at Exhibit-38. In cross-examination she admitted that their company has not issued any notice to the insured, demanding the necessary documents of the vehicle along with driving license of the driver. She admitted that the Insurance policy was valid at the time of accident. It is contention of the learned counsel for the Appellant that driver of the offending vehicle was charged for not having driving licenses. In my view,. DW-1 in cross-examination admitted that no notice was given to the insurer for production of the documents. No person from RTO office has been examined to prove that driver of the offending vehicle was

not holding valid driving license. Mere filing of the charge-sheet cannot be a ground to consider that the driver was not holding valid driving license.

8. In view of above, the Appeal is devoid of merit and I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Respondent's-Claimant's are permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)