IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 371 OF 2024

	Ashok Narayan Rathod Age 47 yrs, Occupation – At present Nil, Resident of – Bhakti Paradise, Building No.1, Flat No.A-21, Gavade Nagar, Pimpri-Chinchwad, Pune- 411033	…	Appellant (Orig. Oppt. No.1-B)
	versus		
1	Ronak Sunil Barman Age Adult, Occupation-Student, R/at-D-2/101, Swapnanagar, Udyamnagar, Pimpri, Pune- 411018	…	Org. Applicant
2	Nayan Ashok Rathod Age Adult, Occupation-Student, R/at-Sector 18/105, Sambhaji Nagar Pradhikaran, Pune- 411019	…	Org. Oppt.No.1-A
3	Sanjay Manmath Tondare Age Adult, Occupation-Business, R/at-34/4, Ajmera Road, “D” Wing, Karishma Enclave, Pimpri, Pune-411018	…	Ori. Oppt. No.2
4	The New India Assurance Co. Ltd. having its Divisional Office at – Rahul Chambers, Mumbai-Pune Road, Kasarwadi, Pune – 411 034	…	Ori. Oppt. No.3 (Respondents)

WITH

FIRST APPEAL NO. 1509 OF 2016

	The New India Assurance Co. Ltd. Rahul Chambers, Mumbai-Pune Road, Kasarwadi, Pune – 411 034, Through Mumbai Regional Office-I, 1st Floor, New India Bhavan, 34/38, Bank Street, Mumbai-23	...	Appellant
	versus		
1	Master Ronak Sunil Barman Age 14 years, Occ-Student, A minor through father & guardian Mr. Sunil		

SHUBHADA SHANKAR KADAM

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	Durgeshwar Barman, Age : 41 years, Occ: Service, R/at D-2/101, Swpnanagari, Udyamnagar, Pimpri, Pune- 411018		
2	Nayan Ashok Rathod Age Adult, Occ-Student,		
3	Ashok Rathod Age : Adult, Occ : Business Both residing at Bhakti Paradise, Building No.1, Flat No.A-21, Gavadenagar, Pimpri-Chinchwad Link Road, Pune-33		
4	Sanjay Manmath Tondare Age Adult, Occ-Business, R/at-34/4, Ajmera Road, “D” Wing, Karishma Enclave, Pimpri, Pune-18	…	Respondents

Mr. D.D.Shinde a/w. Mr. Y.D. Thorat and Mr. H. M. Khupsare, Advocate for the Appellant in First Appeal No.371 of 2024.
Ms. Ketki Gokhale i/b. Mr. Avinash Gokhale, Advocate for Respondent No.1/claimant in both appeals.
Ms. S.S.Dwivedi, Advocate for Insurance Company, Respondent No.4 in First Appeal No.371 of 2024 and for Appellant in First Appeal No.1509 of 2016.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th MARCH, 2024.

Oral Judgment :

1. First Appeal No.371 of 2024 is preferred by the appellant/ original opponent No.1-B, who is the father of respondent No.2/original opponent No.1-B/driver of the offending vehicle against the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”). The Respondent – Insurance Company has also preferred appeal against the same judgment and order. As both the appeals are

against the same judgment and order, I am deciding it by this common judgment.

3. It is contention of learned counsel the appellant/original opponent No.1-B that at the time of the accident, he was at Panjim and opponent No.1-A, who is his son, respondent No.2, was driving the offending vehicle which gave dash to the claimant. The appellant was not aware how the accident occurred and how the offending vehicle came in possession of his son. The appellant has mentioned all these facts in his written statement filed before the Tribunal, but the Tribunal has not considered these facts and has fixed liability on the appellant, which is erroneous. Learned counsel further submitted that at the time of the accident, the offending vehicle was insured with Insurance Company, there was contractual liability between the owner of the offending vehicle and Insurance Company for payment of compensation but the Tribunal has fixed the liability on the appellant, which is erroneous. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the Insurance Company that the appellant/original opponent No.1-B is not the owner of the offending vehicle. At the time of the accident, his son i.e. original opponent No.1-A who was 17 year old was driving the vehicle. At the time of the accident, he was minor. It was burden on appellant/original opponent No.1-B to state that how the offending vehicle came into his son’s possession. There was breach of terms and conditions of the

insurance policy. The Tribunal should have exonerated the Insurance Company from paying the compensation but the Tribunal has passed pay and recover order, which is erroneous. Hence, requested to allow the appeal and exonerate the Insurance Company from paying compensation.

5. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

6. While dealing with the issue of fixing the liability, the Tribunal has observed that at the time of accident, original opponent No. 1-A, who was driving the vehicle, was minor. Original Opponent No.1-B is the father of minor. The owner of the offending vehicle did not appear before the Tribunal to put his case how the offending vehicle went into possession of original opponent No.1-A who was minor. The offending vehicle was insured with appellant-Insurance Company. Considering these facts, the Tribunal has observed that appellant-original opponent No.1-B along with owner of the vehicle are liable to pay compensation and directed the Insurance Company to pay compensation to the claimant and recover it from original opponent No.1-A/minor who was driving the vehicle, appellant-original opponent No.1-b/father of the minor and original vehicle/original opponent No.2.

6.1. In my view, the Tribunal should not have fixed liability on the appellant, who is the father of the driver of the offending vehicle as there was no contractual liability between him and the Insurance Company. Admittedly, at the time of the accident, the offending vehicle was insured with Insurance Company. The Insurance Company has examined their officer as witness to prove that, at the time of the accident, the offending vehicle was transferred in the name of father of minor driver but no evidence of transfer is produced on record. Unless, the transfer of vehicle is recorded in RTO record, it cannot be considered as valid transfer. As the minor was driving the vehicle at the time of the accident, hence, there was breach of terms of the insurance policy. It is settled law that if there is breach of terms and conditions of insurance policy, Insurance Company has to pay compensation and recover it from the owner of the vehicle.

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

O R D E R

1. First Appeal No.371of 2024 is allowed. Respondent No.4 - Insurance Company shall not recover compensation from appellant i.e. original opponent No.1-B.
2. First Appeal No.1509 is dismissed. The Appellant-Insurance Company shall pay compensation amount along with accrued interest thereon as fixed by the Tribunal to the claimant and recover it from the owner of the offending vehicle/original opponent No.2.

3. The statutory amount in First Appeal No.1509 of 2016 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)