

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 1880 OF 2008

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The New India Assurance Co. Ltd.)
Thane Divisional Office, Shiv Krupa)
Commercial Complex, 3rd floor,)
“B” Cabin Naka, Gokhale Road,)
Naupada, Thane 400 602)....Appellant
(Org. Opp. No.2/Insurer)

Versus

1. Shailesh Sharad Mhatre,)
Age: 21 years, Occ: Service,)
R/at 402, Ekveera Aai Apartment, Pakhadi,)
Kharegaon, Kalwa, Thane.)

2. Narsi Nersi & Sons,)
Kailash Rice Mill,)
At Bereja, Dist. Ahmedabad,)
State of Gujarat)
3. Sureshbhai Narsi Soni,)
At. Bhadni, Taluka-Kotdasangani,)
Dist. Rajkot, Gujarat State.)....Respondents
(Org. Applicant &
Opp. Nos. 1 & 3.)

Mr. D. R. Mahadik a/w Ms. Pooja Yadav, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

Oral Judgment. :

1. The issue involved in this appeal is that offending vehicle was not insured with the Appellant/Insurance Company.

2. It is contention of learned counsel for the Appellant that registration number of the offending vehicle is not correct number. At the time of accident, the offending vehicle was not insured with the Appellant/insurance company but, this fact is not considered by the tribunal. The number of offending vehicle is GJ-03-V-7011 (Tata truck) where as the number of insured vehicle is shown as GJ-03-T-7011, it shows that the offending vehicle was not insured with the Appellant/Insurance company but this fact is not considered by the tribunal hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent/Claimant that the Exhibit-35 is a certificate of insurance issued by the Appellant/Insurance Company. It shows that policy number belongs to Tata truck and it manufactured in the year 1996, chassis number and engine number mentioned in the insurance policy is belong to offending vehicle. The order passed by the tribunal is legal and valid and no interference is required in it.

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

5. While dealing with the issue of involvement of vehicle, the Tribunal has observed that Exhibit-35 & 36. certificate of insurance have been produced by the claimants on record. Exhibit 35 is in In respect of registration number i.e. GJ-03-V-7011. The make is Tata truck model is of year 1996 bearing chassis number 114140 and engine number 125457. The owner’s name is mentioned as Sureshbhai Soni, District Rajkot. The other certificate Exhibit-36 is in respect of vehicle bearing registration No. GJ-03-T-7011 and the

model number is shown as 1990 chassis number is KSA-35-90 and owners name mentioned as Vasant N. Gosavi from Kalyan. The tribunal has observed that though, there is dispute regarding to the registration number wrongly typed in the certificate of insurance, the fact remains that, from the documents produced on record, the involved vehicle is bearing registration number GJ-03-V-7011 and not GJ-03-T-7011. In the investigation report of Shri. Nilesh Shaha dated 29th November, 2004 points out the correct number of the vehicle as GJ-03-V-7011. It appears that in the insurance policy due to oversight the wrong number was mentioned. If that is the case, then obviously, the fault would be of the company and not the insured to type out the wrong number and not the correct number. As it can be seen from the National Permit Article 'N' the registration number of the vehicle is GJ-03-V-7011. The year of manufacture is 1996 and the engine number tally with the certificate issued by the R.T.O. Rajkot, Gujarat. I do not find infirmity in it. In my view, the tribunal has observed that due to mistake of Appellant/Insurance Company wrong digit is mentioned in the insurance policy. The insurance policy shows that offending vehicle was insured with the Appellant/Insurance Company. Moreover, no witness is examined by the Appellant to

prove their defense.

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

ORDER

- i. Appeal is dismissed.
 - ii. The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. 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. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)