

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.460 OF 2020

ICICI Lombard General Insurance Co. Ltd. Through its authorized representative Mr. Prathamesh Dinde Having its office at Peninsula House, 4 th Floor, Dr. D. N. Road, Fort, Mumbai – 400 001	...	Appellant (Ori.Opp. Party No.3)
versus		
1. Jennifer Abilio Nunes Age : about 45 years, Occ : Household 2. Sarkat Goldar Aged : about 25 years, Occu : Driver Res. No.1 & 2 both residing at Nana Faliya, Ambhata, Tal : Gandevi, Dist : Navsari, Gujarat State. 3. Birenbhai Ramesh Patel Adult, Occ : Business Residing at Nana Faliya, Ambhata, Tal : Gandevi, Dist : Navsari, Gujarat State		Respondents (Present Respondent no.1 being Original Applicant and respondent No.2 and 3 being Original Opponents no.1 and 2 i.e. driver and insured respectively)

with
FIRST APPEAL NO.1633 OF 2016

ICICI Lombard General Insurance Co. Ltd. Through its authorized representative Mr. Prathamesh Dinde Having its office at Peninsula House, 4 th Floor, Dr. D. N. Road, Fort, Mumbai – 400 001	...	Appellant (Ori.Opp. Party No.3)
versus		
1. Beatriz Abilio Nunes Age : about 68 years, Occ : Household 2. Jennifer Abilio Nunes Age : about 45 years, Occ : Household		

3. Celina Malcom Serpes Age : 35 Years, Occ : Household Res. 1 to 3 both residing at :- Silvassa, Kilwani Naka, Near Swaminarayan Temple, Opp. Dr. Sukla, Silvassa, Union Territory, Dadra & Nagar Haveli. 4. Sarkat Goldar Aged : about 25 years, Occu : Driver Residing at Nana Faliya, Ambhata, Tal : Gandevi, Dist : Navsari, Gujarat State. 5. Birenbbhai Ramesh Patel Adult, Occ : Business Residing at Nana Faliya, Ambhata, Tal : Gandevi, Dist : Navsari, Gujarat State.		Respondents (Present Respondent no.1 to 3 being Original Applicants and Respondent no.4 and 5 being Original Opponents no.1 and 2 i.e. driver and insured respectively)
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Mr. Rajesh Kanojia i/b. Res Juris, Advocate for the Appellant in both the Appeals.

Mr. Sujeet Kurup a/w. Mr. T. R. Yadav, Advocate for Respondents/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

Oral Judgment. :

1. Both these appeals are preferred by the appellant-Insurance Company against the judgment and order passed by Motor Accident Claims Tribunal, Dadra and Nagar Haveli, Silvassa (for short "the Tribunal"). As both these appeals are against the same judgment and order, I am deciding it by this common judgment.

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 effective and valid driving license. To prove the said fact, the Investigating Officer of the said crime was called and he has given his evidence but these facts are not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants submitted that license of the driver of the offending vehicle was produced on record. The driver of the offending vehicle appeared before the Tribunal, he had produced a copy of the driving license on record. The appellant-Insurance Company has not examined witness from RTO's office to prove that the said license was not valid. The Tribunal has considered all the aspects while passing the order, hence, no interference is required in it.

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

5. To prove it's defense, the appellant -Insurance Company has examined the Investigating Officer -Babulal Vani at Exhibit- 89 in support of their case. In cross-examination, this witness admitted that the driver of the offending vehicle was holding driving license. Considering these facts, the Tribunal has observed that the driver of the offending vehicle was holding driving license at the time of the accident and on that ground, the Tribunal has fixed liability on the appellant-Insurance Company. I do not

find infirmity in it. It has come on record that the driver of the offending vehicle was holding effective and valid driving license. To rebut said fact, the appellant -Insurance Company has not examined witness from RTO office.

6. Considering the above, the appeals are devoid of merit and I pass following order :

ORDER

1. Both appeals are dismissed. No order as to cost.
2. The claimants in both appeals are permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount in both appeals 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.)