IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1299 OF 2015

1. Sunita Shak Kapadane	}	
Age-43 years, Occ : Household	}	
2. Akash Sham Kapadane	}	
Age-23 yers, Occ : Business	}	
Both R/o. B-104, Radhavihar, Dombivali,	}	
District-Thane-421203 and presently R/at	}	(Org. Claimants)
Laxminagar, Chalisgaon, District-Jalgaon.	}	**....Appellants**

Versus

1. Sudam Tukaram Pared	}	
Age-Adult, Occ : Business	}	
R/o. Jaihind Pada (Kotipada), Post-Gauripada,	}	
Nalasopara (E), Vasai, District-Thane-421 209	}	
2. ICICI Lombard General Insurance Co. Ltd.,	}	
6th Floor, Wing No.-601-2, Godrej Colicium,	}	
Eastern Express Higway, Sion Housing Society,	}	(Org. Opponents)
Mumbai-400 022.	}	**....Respondents**

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Mr.Niranjan P. Shimpi, for the Appellants.
Ms.Varsha Chavan, for Respondent No.2.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 26th FEBRUARY 2024.

ORAL JUDGMENT :

. By way of this Appeal the Claimant's are seeking enhancement of the compensation and exoneration of the Insurance Company.

2. It is contention of the learned counsel for the Appellant that, the deceased was Architect and he was earning Rs.30,000/- per month but the Tribunal has considered his yearly income on lower side. The learned counsel further submitted that, the Tribunal has exonerated Insurance Company on the ground that the Respondent No.1 did not produce effective and valid driving licenses on record, which is erroneous. He relied on ***IFFCO Tokio General Insurance Company V/s. Geeta Devi and Other***[1]. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that, the Tribunal has considered yearly income of the deceased as per the Income Tax Returns filed on record. The learned counsel further submitted that, though Respondent No.1 i.e. owner of the vehicle appeared before the Tribunal but failed to produce driving license on record. On that basis, the Tribunal has exonerated Insurance Company which is proper. Hence, no interference is required in it. She relied on ***National Insurance Co. Ltd V/s. Swaran***

1 2023 SCC Online SC 1398

***Singh*[2]**

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

5. To prove the income of deceased, the Claimant's have examined Appellant No.1-wife of the deceased. She has stated that, the deceased was Architect and he was working as a Manager in Company of Dumasia Desai Nandani Architects and he was getting salary of Rs.30,000/- per month. The Income Tax Returns are filed on record.

6. While dealing with the issue of income of the deceased, the Tribunal has observed that from the Income Tax Returns produced on record for the year 2007-2008, it appears that, the total income of deceased was Rs.1,65,087/-. No evidence was produced on record to show that, the deceased was earning Rs.30,000/- per month. On that basis, the Tribunal has considered income of deceased at Rs.1,67,087/- per annum. I am unable to understand the observations of the Tribunal as Income Tax Returns are produced on record at Exhibit-40 and this Income Tax Return shows gross total income of the deceased at

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2 (2004) 3 SCC 297

Rs.2,65,456/-. Moreover, the income tax expenditure, which is part of Exhibit-40 shows total income of deceased at Rs.3,77,317.87/-. As the Income Tax Returns shows the total income of deceased at Rs.2,65,456/-, I am considering this income as annual income of the deceased.

7. In respect of the issue of the driving license, the Respondent No.1 owner of the vehicle, in his Written Statement has stated that at the time of the accident, the driver of the offending vehicle was holding effective and valid license. The copy of the driving licenses is produced on record, which is at Exhibit-73.

8. It is contention of the learned counsel for the Respondent-Insurance Company that, driver of the offending vehicle was not holding effective and valid license at the time of the accident. To prove its defence the Insurance Company has examined DW-1-Yogesh Solanki, Junior Clerk, RTO Office, Thane at Exhibit-58. He has stated that the license No.MH-04-1998/6862 was issued from Divisional Office, Thane, which was issued in the name of Walter Francis Desilva for two wheeler. Thereafter, this witnesses further stated that the license No.MH-04-1998/4388 is issued in the name of Chaman

Madhu Sathiya for riding motorcycle. This witness further stated that the licenses No.MH-04-1998/6862 was not issued from Thane RTO Office in the name of Shaikh Mohammad Abbas Khan. In cross-examination this witness admitted that in Thane District there are two Regional Transport Office one is Main Office and other is Sub Office of it and he works in the Sub Transport Office.

9. To prove its defence the Insurance Company examined, their Officer DW-2-Shabad Altaf Shaikh at Exhibit-69. He has stated that at the time of the accident driver of the offending vehicle was not holding effective and valid driving license. In cross-examination he has admitted that, the owner of the offending Tempo had given copy of the driving licenses of the driver but in investigation it found that the said license was not issued by RTO Office, Thane. He further admitted that in Thane District there are two RTO Offices and they had not gone into the main Thane RTO Office to make enquiry about driving license. From the evidence of these witnesses it appears that in Thane District there are two Regional Transport Offices and the Junior Clerk was examined form the Sub Office and in cross-examination he admitted that the license produced on record is, from the main Office.

Moreover, the officer of the Insurance Company has admitted in the cross-examination that they did not make enquiry in the Regional Transport Office about issuance of the driving license. But these facts are not considered by the Tribunal and has exonerated Insurance Company, which is erroneous.

10. It is contention of the learned counsel for the Appellant-Insurance Company that the order of the Tribunal is not challenged by the owner of the vehicle. Hence adverse inference should be drawn against owner of the vehicle. The learned counsel further submitted that the owner of the vehicle had not led any evidence to prove that the driver had driving license. In my view, in the written statement filed by the owner of the vehicle he has taken specific defense that the driver of the offending vehicle was holding driving license and he produced copy of driving license on record. The Appellant-Insurance Company has examined, their officer and clerk from RTO Office to prove that it was fake license but from the evidence of both these witnesses, it revealed that the license was issued by the main RTO Office. The Respondent-Insurance Company has not inquired in the main RTO Office about issuance of the license. Though the owner of the vehicle did not file

Appeal, the Appeal is filed by the Claimant's and in this Appeal, it is revealed that, the driver of offending vehicle was holding effective and valid driving license. At the time of the accident, offending vehicle was insured with the Insurance Company. Hence, Insurance Company is liable to pay compensation. I have gone through the case law cited by learned counsel for the Respondent-Insurance Company, the facts of cited case and present case are different hence not applicable.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Respondent-Insurance Company shall deposit the amount as fixed by the Tribunal along with accrued interest thereon from date of filing of the Claim Petition till realization of the amount.

(iii) The Claimants are permitted to withdraw the deposited amount alongwith interest.

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

11. The learned counsel for the Appellant-Insurance Company seeks stay to order of this Court. As accident is of the year 2008, hence, I am not inclined to grant stay.

(SHIVKUMAR DIGE, J.)