



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH AT NAGPUR.**

First Appeal No. 678 of 2021

Madhukar K. Dange
Aged – Major, Occupation – Owner-cum-
Contractor
R/o Shivaji Ward, Desaiganj,
Tah. Desaiganj, Dist. Gadchiroli.

... Appellant

- Versus -

- (1) Branch Manager, The New India
Assurance Corporation Limited,
J. N. gupta Building, Hospital Ward,
Kasturba Road, Chhota Bazar,
Chandrapur.
Tah. & Dist. Chandrapur.
- (2) Smt. Niranjana Wf/o Sanjay Meshram,
Aged about 32 Years,
Occupation – Housewife
- (3) Samikshya Dt./o Sanjay Meshram
Agea 9 years, Occ. – Nil.
- (4) Ashvini Dt./o Sanjay Meshram,
Agea 7 Years, Occ. Nil.
- (5) Divya Dt./o Sanjay Meshram,
Agea 11 Years, Occ. Nil.
All R/o Ganguli, Tah. Kurkheda,
District – Gadchiroli.
Respondent nos. 3 to 5 through their
legal guardian respondent no. 2
- (6) Mahadev S/o Gopala Meshram
Aged about 64 Years, Occupation-
Cultivation.

- (7) Sumitra Wf/o Mahadev Meshram
Aged 59 Years, Occ. Household.
Both respondent no. 6 & 7 R/O
Malkhanpur, Tah. Arjuni (Morgaon)
Dist. Gondia

Deleted as
Per Court
Order dtd.
10.12.2021

- (8) Baburao s/o Madhav Bhoyar
Aged- Major, Occu.- Driver,
R/o Chop Koregaon,
Tahsil : Desaiganj-Wadsa,
Dist. Gadchiroli.

- (9) Murlidhar S/o Sakharam Bavne,
Aged 50 years, Occ. Labour.

- (10) Kantabai Wf/o Murlidhar Bavne,
Aged 45 Years, Occu.- Labour,
Both Resp. No. 9 & 10 R/o Ganguli,
Tah. Kurkheda, District – Gadchiroli.

... Respondents

Ms. P. R. Badwaik (Pendke), Advocate for the appellant
Ms. Anita Mategaonkar, Advocate for the respondent no. 1
Mr. R. P. Kothari, Advocate h/f Mr. R. R. Vyas, Advocate for respondent
nos. 2, 6, 7, 9 and 10

CORAM : ANIL L. PANSARE, J.

Date : 04-01-2024

ORAL JUDGMENT

Heard.

2. Admit.

3. The challenge is to the order passed by the Motor Accident
Claims Tribunal, Gadchiroli by which the Tribunal has, in clause no. (5)

of operative order, directed the original non-applicant no. 3 – insurer (respondent no. 1 here) to pay the compensation and recover the same from the appellant – original non-applicant no. 2.

4. The reason for issuing such direction is that the driver of offending vehicle i.e. non-applicant no. 1 before the trial Court was not holding the valid and effective driving licence.

5. Having heard both sides, the admitted position is that accident has occurred on 31-1-2015. One Sanjay Meshram who was riding motorcycle bearing no. MH-33-L-5664 met with fatal accident when his motorcycle collided with Tata truck bearing registration no. MH-33-4259 (the offending vehicle). The legal representatives of Sanjay Meshram had filed the claim petition under Section 166 of the Motor Vehicles Act. The Tribunal has directed the non-applicant i.e. owner to pay compensation of Rs. 8,63,000/-. However, in doing so, the Tribunal has directed the non-applicant no. 3 – insurance company to pay the compensation amount first and recover the same from the non-applicant no. 2 - owner. As stated above, the only reason for such direction is that the driver of offending vehicle was not holding valid licence.

6. Learned counsel for the appellant has invited my attention to Exhibit 70 which is driving licence issued in favour of Baburao Bhoyar, who admittedly was the driver of offending truck. The licence holder was authorized to drive light motor vehicle as also the transport vehicle which includes the truck under question. The licence was valid till 30-6-2016. The accident has occurred on 31-1-2015, meaning thereby that Baburao Bhoyar was holding valid licence on the date of accident. Despite such status, the Tribunal has held that driver of offending vehicle was not holding valid licence to drive the offending vehicle. The Tribunal was of the view that though driving licence has been placed on record by the claimants, they have not proved the driving licence.

7. This finding appears to be erroneous. It is well settled that in claim petition under Motor Vehicles Act, provisions of the Indian Evidence Act are not strictly applied. That apart, one cannot expect the claimants, who have suffered casualty in their family and, who are unaware of the documents which the non-applicant must possess, should prove such documents. In such cases, the prime duty is of Investigating Officer viz. to collect the documents and place the same in the form of detail accident report before the Motor Accident Claims Tribunal, which itself ought to be treated as application under Section

166 of the Motor Vehicles Act. In that sense, the persons like the claimants are not even required to file claim petition and are entitled for the benefits which should be extended by the owner and in turn, the insurance company. Thus, it is for the insurance company to plead the Court and to point out the Court below of holding valid licence by the driver of offending vehicle. This appears to have been not done by the insurance company and that resulted into passing erroneous order at the hands of the Tribunal. The order being contrary to the settled position of law requires correction. Hence, following order.

ORDER

- (i) Appeal is partly allowed.
- (ii) The judgment and award dated 23-7-2018 passed by Motor Accident Claims Tribunal, Gadchiroli in MACP No. 19/2015 stands set aside to the extent of direction issued by the Tribunal to the respondent no. 1 (non-applicant no. 3) to recover the amount of compensation from the appellant (non-applicant no. 2).
- (iii) The order directing the insurance company to recover the compensation from non-applicant no. 2 – owner is accordingly set aside.

With the aforesaid modification in the order passed by the Motor Accident Claims Tribunal, Gadchiroli, the appeal stands disposed of in above terms.

(Anil L. Pansare, J.)

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