IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO. 711 OF 2022

APPELLANT (On RA) : M/s Dynapro Motion Controls Private Ltd. through its Director, Vinit Goyal, At-W-64, MIDC, Hingna Road, Nagpur, Tahsil-Nagpur, District Nagpur (Ori. Respondent No.2)

//VERSUS//

RESPONDENTS :

1. Smt. Vijayalaxmi Kodurupaka, Age about Adult: Occu- Household
2. Maheshbabu Ramesh Kodurupaka, Age- about Major: Occu- Education
3. Ku. Lavanya Ramesh Kodurupaka, Age-about Major: Occu- Education
4. Prakashbabu Ramesh Kodurupaka Age-about Major: Occu- Education

   All R/ at- Wankidi, near Hanuman Temple, Tahsil- Wankidi, District- Adilabad (T.S.) (Ori. Claimant)
5. United India Insurance Company Limited, through its Branch Manage, Chandrapur Branch, Chandrapur, Tahsil- Chandrapur: District- Chandrapur (Ori. Respondent No.1)

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Mr. A.A. Bhide, Advocate for the appellant.
Mr. Y.B. Kullarwar, Advocate for respondent Nos.1 to 4.
Mr. Dhaman Chatterjee, Adv. h/f Mr. B. Lahiri, Advocate for respondent No.5.

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CORAM : G. A. SANAP, J.
DATED : 13th FEBRUARY, 2024

ORAL JUDGMENT

1. Heard.

2. **ADMIT**. Taken up for final disposal forthwith with the consent of learned advocate for the respective parties.

3. In this appeal, filed under Section 173 of the Motor Vehicles Act, 1988 (for short "M.V. Act"), by the appellant-original respondent No.2-vehicle owner, the challenge is to the impugned judgment and award dated 30.04.2021, passed by the Motor Accident Claims Tribunal, Chandrapur (for short "the Tribunal") in M.A.C.P. No.155 of 2015. The Tribunal allowed the claim for compensation filed by the claimants-respondent Nos.1 to 4 and directed the Insurance Company- respondent No.1 in the claim and respondent No.5 in this appeal to first pay the amount of compensation awarded and then recover it from the appellant-owner on the ground of breach of the terms and conditions of the insurance policy.

4. Background facts:-

Respondent Nos.1 to 4 claim to be the dependents of the deceased Ramesh. The accident in question occurred on 19.10.2015, at about 7.00 p.m. on the Rajura-Asifabad road at village Lakkadkot Taluka-Rajura, District Chandrapur. According to respondent Nos.1 to 4 (for short "claimants"), the deceased was returning to home from his saloon shop. Near the bus stop, when he was crossing the road at that time the vehicle bearing registration No.MH-40/N-6914 (for short "offending vehicle") came from Asifabad. The vehicle was driven by the driver in a high speed and rash & negligent manner. Near the divider, the offending vehicle gave the dash to the deceased. He sustained serious injuries and died on the spot. The deceased was taken to the hospital and was declared dead. The offending vehicle was seized. First Information Report was registered against the driver i.e.Nilesh Banewar. The claimants claimed the compensation by contending that they had lost their breadwinner.

5. The appellant herein, referred to as the owner of the offending vehicle, opposed the claim. The owner, in sum and substance, denied the claim. According to the owner, Nilesh

Banewar was not the driver. The driver employed for driving the truck was Manohar Yeole. The police filed the case against Nilesh Banewar. It was factually incorrect. Besides, the owner denied the other contentions of the claimants. According to the owner, the driver of the offending vehicle was not responsible for the accident. It was contended that the deceased was not dashed by the offending vehicle. When the offending vehicle came near the spot of the incident, the driver found that people had gathered on the road. The driver of the truck saw that one person was lying injured on the road. On the request of those persons on the spot, the driver of the offending vehicle carried the deceased in the vehicle to the hospital.

6. Respondent No.5-insurer (for short, "Insurance Company") admitted that the offending vehicle was insured with the Insurance Company. The Insurance Company denied liability on the ground that there was a breach of the terms and conditions of the policy. It was contended by the Insurance Company that the driver of the offending vehicle, by name Nilesh Banewar, at the time of the accident was not holding a valid driving licence. The offending vehicle was driven by a person without a driving licence. It was contrary to the terms and conditions of the policy. There

was a breach of the policy. On these averments, Insurance Company denied its liability to pay the compensation. The Insurance Company has also opposed the claim on merit, as well.

7. The parties adduced the evidence before the Tribunal. Learned Member of the Tribunal accepted the claim filed by the claimants. Learned Member of the Tribunal accepted the case of the Insurance Company that there was a breach of the terms and conditions of the policy *inasmuch* as the offending vehicle, at the time of the accident, was driven by Nilesh Banewar who had no driving licence. Learned Member of the Tribunal directed Insurance Company to first satisfy the award and then recover it from the owner of the offending vehicle. Being aggrieved by this judgment and order, the appellant-owner is before this Court.

8. I have heard Mr. A.A. Bhide, learned Advocate for the appellant, Mr. Y.A. Kullarwar, learned Advocate for the respondent Nos.1 to 4 and learned Advocate Mr. D. Chatterjee, holding for Mr. B. Lahiri, learned Advocate for the respondent No.5.

9. In view of the facts and circumstances following points fall for my determination:

"i) Whether the judgment and order passed by the Tribunal holding the appellant responsible to pay the compensation and exonerating the Insurance Company is proper?

ii) What order?"

10. Learned Advocate for the owner submitted that Insurance Company has failed to establish by leading cogent evidence that there was a breach of the terms and conditions of the policy. Learned Advocate submitted that the owner has categorically stated in the written statement that at the time of the alleged accident, the vehicle was driven by Manohar Yeole, who was holding a valid driving licence. Learned Advocate took me through the evidence adduced by the owner and submitted that this fact has been proved. Learned Advocate submitted that Insurance Company has failed to discharge the initial burden with regard to the breach of the terms and conditions of the policy. Learned Advocate submitted that the learned Member of the Tribunal has failed to properly appreciate the evidence on record relevant on this point and has come to a wrong conclusion. Learned Advocate submitted that on the basis of the prosecution

launched against Nilesh Banewar, who admittedly was not holding a driving licence, the learned Member of the Tribunal has inferred that he was driving the offending vehicle at the time of the accident. Learned Advocate submitted that driver appointed by the owner by name Manohar Yeoale and Nilesh Banewar have been examined by the owner to substantiate the contention that there was no breach of the insurance policy. Learned Advocate further submitted that the learned Member of the Tribunal, on the merits of the claim, has also failed to properly appreciate the evidence and as such, has committed a mistake in recording the finding that the claimants are entitled to compensation. In order to seek support to his submission on the point of burden of proof, learned Advocate has placed heavy reliance on the decisions in the cases ***National Insurance company Limited vs. Swaran Singh and others*** reported in ***AIR 2004 SC 1531*** and ***Pappu and others vs. Vinod Kumar Lamba and another*** reported in ***(2018) 3 SCC 208*** wherein it is held that the person who alleges the breach of the policy must prove the same. The Insurance Company is required to establish the breach by cogent evidence. It is held that in the event the Insurance Company fails to prove that there has been breach of the terms and conditions of policy on the part of the insured, the Insurance Company cannot be absolved of its liability. It is held that if, in a given case, there exists sufficient material to draw an adverse inference against either the insurer or insured, the Tribunal may do so.

11. Learned Advocate for the Insurance Company submitted that the learned Member of the Tribunal has properly appreciated the evidence adduced by the parties and on the basis of the said evidence has recorded a finding that there was a breach of the terms and conditions of the policy because, at the time of the accident, the vehicle was driven by Nilesh Banewar, who was not holding a driving licence. Learned Advocate took me through the record and pointed out that after the accident, the offending vehicle was seized in the crime. A crime was registered against Nilesh Banewar, who was found driving the offending vehicle at the time of the accident. It is pointed out that Nilesh Banewar was prosecuted for being responsible for the accident. Learned Advocate submitted that the complaint was not made by the owner or by Nilesh Banewar about the false prosecution of Nilesh Banewar by police for one reason or other. Learned Advocate submitted that on the basis of the proved and undisputed facts a reasonable inference was drawn by the Tribunal against the owner. Learned Advocate submitted that undisputedly, Nilesh Banewar was not holding a driving licence to

drive the offending vehicle. Learned Advocate submitted that a specific plea of breach of the terms and conditions of the policy was raised in the written statement. Learned Advocate submitted that considering this specific plea in the written statement, the owner and Nilesh Banewar were required to justify their conduct through out by bringing sufficient material on record. Learned Advocate submitted that the material on record is sufficient to prove the breach of the terms and conditions of the policy. Learned Advocate submitted that the learned Member of the Tribunal has properly appreciated the material on record.

12. In order to appreciate the rival submissions, I have gone through the record and proceedings. On the date of the accident, the offending vehicle was insured with the Insurance Company. In the written statement, a specific plea was raised that the driver of the offending vehicle at the time of the accident was not holding a valid driving licence and as such, the Insurance Company was not liable to pay the compensation. In the written statement filed by the owner, it was contended that Nilesh Banewar was accompanying the driver of the offending vehicle, Manohar Yeole, at the time of the accident. It was contended that Manohar Yeole was driving the vehicle. It was further contended that police

authorities falsely implicated Nilesh Banewar as an accused in the crime. It is further undisputed that the offending vehicle was seized in the crime. The crime bearing No.119/2015 was registered against Nilesh Banewar, the driver of the offending vehicle, for the offences punishable under Sections 279 and 304-A of the Indian Penal Code and Section 184 of the Motor Vehicles Act, 1988. The owner of the offending vehicle did not make any complaint either to Rajura Police Station or to any Superior Officer of the police with regard to the false implication of Nilesh Banewar in the crime. Similarly, Nilesh Banewar also did not make any such complaint either to the police or before the Court. In ordinary circumstances, the owner was required to make a grievance about the false implication of Nilesh Banewar in place of driver Manohar Yeole. The police admittedly had no enmity with the owner of the offending vehicle as well as with Nilesh Banewar. The police, as such, had no reason to falsely implicate Nilesh Banewar and extend the favour to Manohar Yeole. The conduct of the owner about Nilesh Banewar and Manohar Yeole throughout indicates that he accepted the involvement of Nilesh Banewar being the driver in the accident. The burden of proof is fixed on the basis of the pleadings of the parties. The onus shifts during the course of the trial depending on the undisputed facts and the evidence adduced by the parties. The Court, keeping in mind the existence of sufficient material in such a case, can draw an adverse inference against either the insurer or the insured. In my view, in this case, the owner understood the facts and issue and therefore, took a precaution to adduce the evidence to make good the contention that Manohar Yeole was driving the vehicle at the time of the accident and not Nilesh Banewar, who has been prosecuted by the police. It needs to be stated that the police had no reason to falsely implicate Nilesh Banewar. The police in this case, on the basis of the preliminary investigation, found the involvement of Nilesh Banewar being driver of the offending vehicle at the time of the accident and therefore, he was made an accused in the case. The police had no reason to give a clean cheat to Manohar Yeole.

13. In my view, there are number of circumstances which are sufficient to agree with the finding of fact, on the point of breach of the terms and conditions of the policy by the owner. The offending vehicle was seized by the police in the crime. The owner did not make a complaint to the Superior Police Officer with regard to the false involvement and seizer of the vehicle by the police. The offending vehicle was released on suprutnama, on the application of the owner. At the stage of suprutnama the owner

did not make grievance that the vehicle was not driven by Nilesh Banewar but by Manohar Yeole. Vinit Goyal (DW-1) has categorically admitted that no grievance was made either to Superior Police Officer with regard to the alleged illegal arrest of Nilesh Banewar or before any Court. He has admitted that one representative of the owner and Advocate were sent on behalf of the Company for releasing Nilesh Banewar on bail. At the time of release of Nilesh Banewar no grievance about his false implication in place of Manohar Yeole was made. Undisputedly, Nilesh Banewar was travelling in the offending vehicle. He was well acquainted with Manohar Yeole. They were employees of the company. Nilesh Banewar, in his evidence has admitted that he was not having a driving licence to drive the vehicle. Mahohar Yeole was holding valid a driving licence. In this factual situation, if Nilesh Banewar was falsely implicated in place of Manohar Yeole, the owner of the offending vehicle would have definitely made a complaint to the police and to the Court. It is, therefore, apparent on the face of the record that the Insurance Company categorically pleaded that there was a breach of the terms and conditions of the licence inasmuch as the offending vehicle was driven by Nilesh Banewar, who was not holding a driving licence. The owner by this defence was put to the notice that Insurance Company denied its liability to pay the compensation alleging breach of the terms and conditions of the licence. Three witnesses examined by the owner/company have deposed in unison on this point. They have stated that at the time of the accident, the offending vehicle was driven by Manohar Yeole and not by Nilesh Banewar. These witnesses have been subjected to cross-examination. Perusal of their cross-examination would show that they have principally admitted their inconsistent conduct as to the main issue. Learned Member of the Tribunal found that this evidence was not sufficient to justify the contention of the owner that there was no breach of the terms and conditions of the policy. On re-appreciation of the evidence, I am satisfied that the finding recorded by Tribunal on this point is based on the available evidence. The evidence has been properly appreciated. The undisputed facts and evidence on record is sufficient to conclude that at the time of the accident, the offending vehicle was driven by Nilesh Banewar, who was admittedly not holding a driving licence. The conduct of the owner, in the teeth of the available material on record, is sufficient to draw an inference against the owner. In my view, therefore, the learned Advocate by relying upon the decisions cited (supra) is unable to make good his submission.

14. Learned Member of the Tribunal, on the basis of the above finding found the claimants entitled to compensation. It is seen that the evidence on record is sufficient to prove the accident. The evidence is sufficient to prove the involvement of the offending vehicle in the accident. The evidence is sufficient to prove that the deceased was given a dash by the offending vehicle when he was passing through the divider. The evidence is sufficient to prove that an accident occurred due to rash and negligent driving by the driver of the offending vehicle. Rash and negligent driving has been proved on the basis of the police case papers relied upon by the claimants. The evidence adduced by the claimants is sufficient to prove that an accident occurred due to the rash and negligent driving of the driver of the offending vehicle. The claimants have proved that they are entitled to compensation. In my view, therefore, no interference is warranted in the well reasoned judgment and order passed by the Tribunal. Learned Member of the Tribunal, considering the peculiar facts of the claim petition and more particularly, the fact that the offending vehicle was insured with the Insurance Company, directed the Insurance Company to first pay the compensation to the claimants and then recover it from the owner of the offending vehicle. The approach of the learned Tribunal is consistent with the object of the socially

beneficial legislation. As such, I answer point No.1 in the affirmative.

15. In view of the above, I conclude that there is no substance in the appeal. The appeal is accordingly dismissed.

16. First Appeal stands disposed of. No order as to costs. Pending applications, if any, stand disposed of.

(G. A. SANAP, J.)

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