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

FIRST APPEAL NO.1186 OF 2009

APPELLANT : The New India Assurance Company Limited, Malkapur Branch, Malkapur, through its' Branch Manager, Taluka-Malkapur, Dist. Buldhana through its' Regional Manager, Regional Office, having its office at Dr. Baba Saheb Ambedkar Bhawan, M.E.C.L. Building, Seminary Hills, Nagpur.

..VERSUS..

RESPONDENTS : 1 Gulabrao S/o Sahebrao Lokhande, aged about 35 years, Occ.: Agriculturist and Labour Work, R/o: Palaskhed Jayanti, Taluka Chikhali, Dist. Bundhana

2 Subhas S/o Dagdu Misal, aged about major, R/o: Saywan, Taluka and Dist. Buldhana

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Mr B. P. Bhatt, Advocate for Appellant.
Mr S. S. Deshpande, Advocate for Respondent No.1.

CORAM : M. W. CHANDWANI, J.
RESERVED ON : 20th JUNE, 2024.
PRONOUNCED ON 28th JUNE, 2024.

JUDGMENT

. Heard.

2. The present appeal preferred by the Appellant – Insurance Company under Section 173 of the Motor Vehicles

Act, 1988 (hereinafter referred as "the M.V. Act" for short) assails the judgment and award dated 20.07.2009 passed by the Motor Accident Claims Tribunal, Buldhana (hereinafter referred as "the Tribunal" for short) in M.A.C.P. No.170 of 2004.

3. The respondent No.1 filed a claim petition under Section 166 of the M.V. Act, for injury sustained by him in a vehicular accident. On 22.04.2003, respondent No.1 was travelling in an auto rickshaw. The driver of the motorcycle gave a dash against the auto rickshaw and in the said accident, respondent No.1 was injured. Respondent No.2 is the owner of a motorcycle bearing No.MH-28/K-6575, which was involved in the accident. Respondent No.1 claimed that the offending motorcycle of respondent No.2 was driven by one Sanjay Pawar.

4. Respondent No.2, the owner of the motorcycle, filed his written statement pleading that said Sanjay Pawar was holding a valid and effective driving licence on the date of accident and his motorcycle was insured with the appellant-Insurance Company to cover third party risk. Whereas, the appellant came up with a defence available to him under Section 149 of the M.V.

Act, claiming that Sanjay Pawar, to whom the respondent No.2 has given his motorcycle, was not having a valid and effective driving licence on the date of accident to drive a motorcycle within the category of insured vehicle and the vehicle mentioned in the policy.

5. The Tribunal, by the impugned judgment and award dated 20.07.2009, allowed the claim petition filed by respondent No.1 directing the appellant and respondent No.2 to pay an amount of Rs.1,51,483/- as compensation to respondent No.1 alongwith interest at the rate of Rs.7.5% per annum from the date of petition till its realization. Feeling aggrieved with the impugned judgment and award, the appellant-Insurance Company has filed the present appeal on the premise that there was a breach of policy, therefore, the appellant ought to have been absolved from its liability to compensate respondent No.1, the third party.

6. Mr B. P. Bhatt, learned counsel appearing on behalf of the appellant, would submit that the Tribunal erred in fixing the responsibility on respondent No.2 to pay the compensation to

respondent No.1. He further submits that Sanjay Pawar, the driver of the offending motorcycle, was not having a valid and effective driving licence to drive a motorcycle. The driving licence of Sanjay Pawar produced by respondent No.2 is for driving the vehicles that come under the category of light motor vehicles and not a motorcycle. Therefore, the driver of the offending motorcycle was not having a valid and effective driving licence on the date of accident. According to him, there is a breach of insurance policy by respondent No.2, therefore, the appellant is not liable to pay the compensation amount and the Tribunal should have directed respondent No.2 to pay the compensation amount to respondent No.1. He submits that perusal of the driving licence of Sanjay Pawar produced by respondent No.2 goes to show that Sanjay Pawar was having authorization to drive a vehicle under the category of light motor vehicles. Therefore, the material on record suggests that Sanjay Pawar was not having a valid and effective driving licence to drive a motorcycle. Therefore, the burden was upon the respondent No.2 to prove that Sanjay Pawar had a valid and effective driving licence to drive a motorcycle.

7. Per contra, Mr S. S. Deshpande, learned counsel appearing on behalf of respondent No.1, vehemently submits that the Tribunal has rightly considered that the burden was on the Insurance Company to prove that there is a breach of policy since the driver of the motorcycle was not having a valid and effective driving licence to drive a motorcycle. He vehemently submitted that the respondent No.2 entered the witness box and had deposed about the driving licence held by Sanjay Pawar, rather, produced the same before the Tribunal. According to him, even if Sanjay Pawar, the driver of the offending motorcycle, does not possess a driving licence to drive a motorcycle, nonetheless the Insurance Company is liable to pay compensation to third party and may recover it from the insured in case of breach of policy. According to him, the impugned judgment and award of the Tribunal directing the appellant and respondent No.2 to pay the amount of compensation jointly and severally to respondent No.1 is perfect. Hence, he sought rejection of the appeal.

8. Heard Mr B. P. Bhatt, learned counsel for the appellant and Mr S. S. Deshpande, learned counsel for respondent No.1.

Though the respondent No.2 is served, he chose not to appear and contest the matter.

9. Perusal of the impugned judgment and award reveals that the Tribunal held that respondent No.1 is entitled to receive compensation of Rs.1,51,483/-. The Tribunal further held that the respondent No.2 has produced driving licence of Sanjay Pawar at Exh-55, which is for authority to drive light motor vehicle. The licence number is mentioned on it. The Tribunal went on to hold that the burden is on the appellant to prove the breach of policy and relying on the case of ***National Insurance Company Ltd. vs Swaran Singh and Ors.***, ***2004(1) SBR 582***, held that the burden of proof is on the appellant to show that Sanjay Pawar was not having a valid and effective driving licence for driving a motorcycle by obtaining the information from RTO on the basis of driving licence number. The Tribunal ultimately held that the appellant has not discharged its burden and fixed the liability on the appellant to pay the compensation amount to respondent No.1.

10. Evidently, the driving licence at Exh-55 of Sanjay Pawar produced by respondent No.2 before the Tribunal gives an authority to Sanjay Pawar to drive the light motor vehicle not a motorcycle. It is not in dispute that for driving light motor vehicle, separate licence is required. A reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Oriental Insurance Company Limited vs Zaharulnisha and others***, ***(2008) 12 SCC 385***, wherein after considering the decision of the three-Judge Bench of the Hon'ble Supreme Court in ***National Insurance Company Ltd. vs Swaran Singh and Ors.***, ***2004(1) SBR 582***, the Hon'ble Supreme Court has observed as under :

> *" The appellant Insurance Company cannot be held liable to pay the amount of compensation to the claimants for the cause of death of Shukurullah in road accident which had occurred due to rash and negligent driving of scooter by Ram Surat who admittedly had no valid and effective licence to drive the vehicle on the day of accident. If a person has been given licence for particular type of vehicle as specified therein, he cannot be said to have no licence for driving another type of vehicle which is of the same category but of different type. When a person is granted licence for driving a light motor vehicle he can drive either a car or a jeep and it is not necessary that he must have driving licence for car and jeep separately. However, the scooterist/motorcyclist, who possesses a driving licence of driving heavy motor vehicle and if he drives a scooter/motorcycle that act is in violation of Section 10(2) of the M.V. Act."*

11. In the case of ***Bajaj Allianz Insurance Co. Ltd. vs Akram Hussain and Ors***., 2011 SCC OnLine Delhi 2960, in para 19, the Delhi High Court has observed as under :

> ***"19.*** *Cumulatively read the aforesaid provisions of law make it incumbent upon a person driving a motor vehicle in any public place to hold a valid and effective driving licence issued to him by the Competent Authority under Chapter II, authorizing him to drive the motor vehicle of the class specified in the licence. It is also clear that a light motor vehicle has been classified as a separate and distinct class of vehicle than a motorcycle, which is a two wheeled motor vehicle as opposed to a light motor vehicle which means a transport vehicle or omni bus the gross weight of either of which, or motor car or tractor or road roller, the unladen weight of any of which, does not exceed 7,500 kilograms. While Clause 21 defines a light motor vehicle, the definition of a motorcycle is as contained in Clause 27. Thus, the two categories of vehicles must be held to be separate and distinct. Even otherwise, it stands to reason that the expertise which is required to drive a motorcycle is quite different from the know-how required by a person for driving a light motor vehicle, that is to say, it cannot be assumed that every person who is competent to drive LMV, will be skilled in driving a two-wheeler as well."*

12. In view of the laws enunciated in the above said authorities that the light motor vehicle and motorcycle being different categories of vehicles are separate and distinct, therefore, they require distinct authorization/licence.

13. Having held so, the only question that remains to be examined is, whether there was a breach of policy on the part of

insured in allowing Sanjay Pawar to drive a motorcycle owned by him.

14. The Tribunal held that the burden was on the Insurance Company to prove the breach of policy. The Insurance Company/appellant could have accessed the RTO record and could have examined the officials of RTO to prove that Sanjay Pawar was not having any other licence than the one, which was produced by respondent No.2.

15. The respondent No.2 examined himself and deposed that Sanjay Pawar was holding a driving licence Exh-55 which is a licence to drive light motor vehicle. Though, the respondent No.2 in his deposition has deposed that Sanjay Pawar has another driving licence for driving a motorcycle and he can produce the said driving licence, but the same was not produced. Thus, the driving licence of Sanjay Pawar Exh-55 produced by respondent No.2, on face of it reveals that the said driving licence is authorization to Sanjay Pawar to drive light motor vehicle only. This establishes a fact that Sanjay Pawar was having a driving licence to drive light motor vehicle only. If respondent No.2

claimed that he had another driving licence in the name of Sanjay Pawar to drive a motorcycle, he should have produced it before the Tribunal, but that was not done.

16. In the case of ***Pappu and Others vs Vinod Kumar Lamba and Anr.***, ***(2018) 3 SCC 208***, the Hon'ble Supreme Court had an occasion to deal with the issue of burden of proof in case of breach of policy. The Hon'ble Supreme Court has observed as under:

> *"**13.** …. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent No.1 to make the insurance company liable to discharge his liability arising from rash and negligent driving by the driver of his vehicle. The insurance company can be fastened with the liability on the basis of a valid insurance policy only after the basic facts are pleaded and established by the owner of the offending vehicle that the vehicle was not only duly insured but also that it was driven by an authorised person having a valid driving licence. Without disclosing the name of the driver in the written statement or producing any evidence to substantiate the fact that the copy of the driving licence produced in support was of a person who, in fact, was authorised to drive the offending vehicle at the relevant time, the owner of the vehicle cannot be said to have extricated himself from his liability. The insurance company would become liable only after such foundational facts are pleaded and proved by the owner of the offending vehicle."*

17. A reference can also be made to the judgment of this Curt in the case of ***Bajaj Allianz General Insurance Co. Ltd. vs***

Wahidbi and Anr., ***2014 SCC OnLine Bom 795***. In para 9 of the said judgment, it has been observed as under:

> *"**9.** The aforesaid provisions show that duty is cast on the driver/owner of the offending vehicle to produce relevant record before police and the record includes the particulars of driving licence of the driver. In view of these circumstances, when charge sheet is filed by police for the offence of driving of motor vehicle without holding driving licence (for offence punishable under Section 3/181 of the Act), it needs to be presumed that the licence was not available, it was not produced by the driver/owner."*

18. The driving licence of Sanjay Pawar Exh-55, which does not specify that the authorization of driving a motorcycle was held by Sanjay Pawar, the driver of the offending vehicle. In spite of a statement on oath of respondent No.2 that he can produce another driving licence of Sanjay Pawar showing the authorization to drive another motor vehicle, nothing was produced on record. Therefore, the burden has not been discharged by respondent No.2.

19. In view of above said discussion, it can be said that on the day of accident Sanjay Pawar was not holding a valid and effective driving licence to drive a motorcycle. As a result, the appeal deserves to be allowed to the limited extent. Though, the appellant/Insurance Company is not liable to pay the amount of

compensation, but it shall satisfy the award to third party i.e. the respondent No.1 and shall have the right to recover the amount deposited by it from the owner of the vehicle i.e. the respondent No.2.

20. The first appeal is partly allowed.

21. The impugned judgment and award dated 20.07.2009 is modified by adding the following Clause in the operative order as under :

i) The appellant-Insurance Company shall be entitled to recover the amount of compensation paid or deposited by it from respondent No.2.

22. Rest of the operative order of the impugned judgment and award shall remain intact.

(M. W. CHANDWANI, J.)

TAMBE