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

FIRST APPEAL NO. 846 OF 2022

APPELLANT (Original Resp. No.1 on R.A.)	:		Ramrao s/o Mahadeorao (Madhavrao) Jamdhade, Age : 75 years, Occu. Nil, R/o. N-8, C-2, Kirti Housing Society, Azad Chowk, Plot No.22, Aurangabad, Tq. and District Aurangabad

//VERSUS//

RESPONDENTS (Resp. No.1 and 2 Orig. Claimants. Respondent No.3 Orig. Respondent No.2)	:	**1.**	Smt. Shashikala w/o Haridas Rangari, Age : 62 years, Occu: Household,
		2.	Haridas s/o Shivram Rangari, Age : 67 years, Occu : Nil Both R/o. Shivaji Ward, Sharda Chowk, Sakoli, Tq. Sakoli, Dist. Bhandara
		3.	I.C.I.C.I. Lombard General Insurance Co. Ltd. Corporation Lombard, House 414, Veer, Savarkar Marg, Near Siddhi Vinayak Temple, Prabhadevi Mumbai 400025

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Mrs. Mrunal Naik, Advocate for appellant.
Mrs. Ashwini S. Athalye, Advocate for respondent No.3.
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CORAM : G. A. SANAP, J.
DATED : 20th FEBRUARY, 2024

ORAL JUDGMENT

1. Heard finally with the consent of learned Advocates for the respective parties.

2. The appellant-owner of a Tata Sumo Spacio Jeep bearing Registration No.MH-20-AV-50 (for short, “offending vehicle”) has filed this appeal against the judgment and award dated 18.10.2016 passed by the Motor Accident Claims Tribunal, Bhandara. The Motor Accident Claims Tribunal, Bhandara, allowed the claim filed by respondent Nos.1 and 2 but held the appellant-owner only liable to pay the compensation and exonerated respondent No.3-Insurance Company.

3. In this appeal, the only question that needs to be addressed is whether the Tribunal was right in holding the appellant liable to pay the compensation and exonerating the Insurance Company?

4. The deceased-Lokesh was the son of respondent Nos. 1

and 2. He died in a vehicular accident on 23.03.2008 while travelling in the offending vehicle. Respondent Nos.1 and 2, the parents of the deceased filed claim petition for compensation.

5. The claim was opposed by the Insurance Company as well as by the appellant. According to the Insurance Company there was a breach of the terms and conditions of the policy inasmuch as the driver of the offending vehicle was not holding the driving licence.

6. Learned Member of the Tribunal, on consideration of the evidence and particularly the evidence of claimant No.2, has held that there was a breach of the terms and conditions of the policy. Learned Member observed that claimant No.2 in his cross-examination categorically admitted the breach *vis-a-vis* the use of the offending jeep on a higher and reward basis by deceased Lokesh.

7. Learned Advocate for the appellant submitted that defence of the Insurance Company that the driver, on the date of the accident, was not holding a valid driving licence was negatived by the Tribunal. Learned Advocate submitted that except this

defence no other defence was raised *vis-a-vis* the breach of the terms and conditions of the policy. Learned Advocate submitted that only on the basis of the admission of claimant No.2 in the cross examination the learned Member of the Tribunal exonerated the Insurance Company. Learned Advocate submitted that claimant No.2 was not travelling in the offending jeep and therefore, the admission given by claimant No.2 was due to sheer ignorance of the facts. Learned Advocate submitted that this admission could not be said to be consistent with the defence of the Insurance Company in any manner. Learned Advocate further submitted that two more claims arising out of the same accident were filed before the Motor Accident Claims Tribunals At Buldana and at Aurangabad. In those claim petitions, the owner and Insurance Company were held jointly and severally liable to pay compensation. Learned Advocate submitted that therefore, the part of the order exonerating the Insurance Company and holding the appellant solely liable to pay the compensation is required to be set aside or modified.

8. Learned Advocate for the Insurance Company submitted that the defence of the breach of the terms and conditions of the policy was specifically raised. It was contended in

the written statement that the driver was not holding a valid driving licence.

9. Learned Advocate for the Insurance Company was unable to point out from the written statement that apart from this defence, any other defence was raised. Learned Advocate for the Insurance Company has submitted that against the judgments and awards passed by the Tribunal at Buldhana and Aurangabad, the Insurance Company did not file any appeal.

10. Insurance Company has not filed an appeal challenging the judgment and award on merit. Appellant-owner of the offending vehicle has filed an appeal and challenged the part of the order whereby he was solely held responsible to satisfy the award.

11. I have gone through the record and proceedings. It is undisputed that Insurance Company did not plead in the written statement that on the date of the accident, the offending vehicle was used on a higher or reward basis. Similarly, it was not pleaded that the deceased was either a gratuitous passenger or a fare paying passenger. Perusal of the judgment and award passed by the Tribunal would show that for the purpose of exonerating the

Insurance Company from its liability to pay the compensation, the admission given by claimant No.2 has been made the sole basis. In my view, in the facts and circumstances, the Tribunal was not right in exonerating the Insurance Company. Claimant No.2 was not travelling in the offending vehicle at the time of the accident. Similarly, the Insurance Company did not plead that there was a breach of the terms and conditions of the policy inasmuch as the offending vehicle was given on a higher or reward basis. Insurance Company only pleaded that the driver was not holding a valid driving licence. This defence was negatived on the basis of the concrete evidence. It needs to be stated that in the absence of a specific defence by Insurance Company the learned Member of the Tribunal was not right in giving undue importance to the admission by witness who was not present on the spot of the incident as well as not directly concerned with the hiring of the vehicle.

12. In the facts and circumstances, in my view, the learned Member of the Tribunal on this count was not right. The appellant and respondent No.3-Insurance Company were jointly and severally liable to pay the compensation. In view of this, the above point is answered in the negative.

13. Hence I pass the following order:-

ORDER

i) The appeal is allowed.

ii) The order passed by the Motor Accident Claims Tribunal, Bhandara in M.A.C.P. No.38/2013 dated 18.10.2016 exonerating the Insurance Company from paying the compensation is quashed and set aside.

iii) The order is accordingly modified.

iv) The appellant and respondent No.3 are held jointly and severally liable to pay the compensation and proportionate costs.

14. 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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