IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 FIRST APPEAL NO. 1191 OF 2019

THE NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORIZED SIGNATORY, AURANGABAD
VERSUS
SONALI @ DNYANESHWARI RAJENDRA NETKE AND ANR
...
AND
12 FIRST APPEAL NO. 1192 OF 2019

THE NEW INDIA ASSURANCE CO. LTD., THR ITS AUTHORIZED SIGNATORY, AURANGABAD
VERSUS
RAJENDRA PIRAJI NETKE AND ANR
...
Advocate for Appellant : Mr. Deshmukh Mohit R.
Advocate for Respondent No. 1 : Mrs. Rani Bharuka Bora h/f Mr. Satyajit S. Bora
...

CORAM : SHAILESH P. BRAHME, J.
DATE : 01.10.2025

PER COURT :

Heard both sides.

2. Already it is indicated to the parties that appeal shall be decided finally at the admission stage. None appears for the owner of the vehicle, though served.

3. Both appeals are arising out of self-same accident, in which claimants-husband and wife proceeding on a motor cycle met with an accident due to dash given by the offending vehicle, Tempo. They preferred separate claim petition Nos. 227/2017 and 228/2017.

4. In First Appeal No. 1192/2019 in which Rajendra is claimant, an amount of Rs. 21,53,862/- is awarded. In First Appeal No. 1191/2019

claimant is wife-Sonali and an amount of Rs. 1,00,190/- is awarded to her as a compensation. The appellant-insurnace company is made liable to pay the compensation jointly and severally. I propose to refer to the parties and the proceedings to the First Appeal No. 1192/2019.

5. Learned counsel for the appellant Mr. Deshmukh appearing for the Insurance Company submits that respondent no. 2, who is the owner of the vehicle appeared before the Tribunal but did not file written statement. No documentary evidence was produced by him. The appellant Company has taken specific stand of breach of policy. The driver of the offending vehicle was not having valid driving licence at the relevant time. It is error of jurisdiction in holding that the appellant insurance company failed to discharge the burden regarding breach of policy. Reliance is placed on the judgment of the Supreme Court in the matter of **Pappu and others Vs. Vinod Kumar Lamba and another; (2018) 3 Supreme Court Cases 208.** It is further submitted that the quantum arrived at in both the proceedings is vulnerable. The Tribunal did not appreciate the documentary evidence and unreasonable and exorbitant quantum has been awarded.

6. Per contra, learned counsel Mrs. Bora repels the submissions. She supports the impugned judgment and award. It is submitted that the appellant-Insurance Company did not lead any evidence. The claimants have led documentary as well as oral evidence to prove the entitlement and compensation. It is submitted that the burden was upon the appellant-Insurance Company to prove breach of policy. No fault can be attributed to the claimants for not producing on record the driving licence.

7. I have considered the rival submissions of the parties. I have gone through record and proceedings also. The owner of the vehicle though caused appearance before the Tribunal did not contest both the petitions by filing any written statement. No documentary evidence is placed on record on his part. The licence of the driver of the offending vehicle was not placed

before the Tribunal in either of the proceedings.

8. The claimants led oral as well as documentary evidence. Against the driver of the offending vehicle, criminal action is taken and a charge-sheet has also been filed. He is facing the prosecution.

9. The predominant challenge of the appellant-Insurance Company is the breach of policy in terms of Section 149 of the Motor Vehicles Act, 1988 (hereinafter referred to 'the Act'). The insurance policy (Exh. 28) was placed on record showing the validity period from 04.04.2016 to 07.03.2017. The accident occurred on 08.06.2016, which is covered by the policy. It has not been brought on record that the driver of the offending vehicle was holding valid driving licence. The issue to that effect was framed by the Tribunal, and it is answered in following manner :

> *"**As to issue no. 3**:*
>
> *The burden was on respondent No. 2 to prove that the respondent No. 1 committed breach of the insurance policy Exh. 28. But to prove the same respondent No. 2 did not examine any witness nor filed any documents on record. On perusal of copy of insurance policy Exh. 28 it is apparent that the said policy was valid from 04.04.2016 to 07.03.2017. The accident occurred on 08.06.2016 i.e. during the policy period. As the respondent no. 2 could not prove breach of insurance policy, issue no. 3 is answered in negative."*

10. While assailing the above referred findings, reliance is placed on the judgment of the Supreme Court in the matter of **Pappu Vs. Vinod Kumar (supra).** Following are the relevant extracts:

> *"11. The question is : whether the fact that the offending vehicle bearing No. DIL 5955 was duly insured by Respondent 2 insurance company would per se make the insurance company liable ?*

12. This Court in National Insurance Co. Ltd. has noticed the defences available to the insurance company under Section 149(2)(a)(ii) of the Motor Vehicles Act, 1988. The insurance company is entitled to take a defence that the offending vehicle was driven by an unauthorised person or the person driving the vehicle did not have a valid driving licence. The onus would shift on the insurance company only after the owner of the offending vehicle pleads and proves the basic facts within his knowledge that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving licence at the relevant time.

13. In the present case, Respondent 1 owner of the offending vehicle merely raised a vague plea in the written statement that the offending Vehicle No. DIL 5955 was being driven by a person having valid driving licence. He did not disclose the name of the driver and his other details. Besides, Respondent 1 did not enter the witness box or examine any witness in support of this plea. Respondent 2 insurance company in the written statement has plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorised person and having valid driving licence. Respondent 1 owner of the offending vehicle did not produce any evidence except a driving licence of one Joginder Singh, without any specific stand taken in the pleadings or in the evidence that the same Joginder Singh was, in fact, authorised to drive the vehicle in question at the relevant time. Only then would onus shift, requiring Respondent 2 insurance company to rebut such evidence and to produce other evidence to

> *substantiate its defence. Merely producing a valid insurance certificate in respect of the offending truck was not enough for Respondent 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."*

11. In view of the candid exposition of law by the Apex Court, mere production of valid insurance policy certificate is not sufficient for holding the Insurance Company liable to discharge its liability arising out of rash and negligent driving by driver of the vehicle. In the present case, the basic and foundational facts are missing that the driver of the offending vehicle was having valid driving licence. The owner of the offending vehicle did not file any written statement or produce on record the driving licence. The burden is upon the owner or driver of the offending and if the foundation facts are pleaded and proved then onus shifts to the insurance company. I am of the considered view that present case is squarely covered by the ratio laid down by the Apex Court as referred above. The findings in this regard referred

above are perverse.

12. The learned counsel for the appellant further adverted my attention to Section 134(c) of the Act, which obliges driver or other person in-charge of the vehicle to give relevant information in writing to the insurer. The said obligation has not been discharged in the present case. It is relevant to refer to Section 134(c) of the Act :

> **"Section 134-Duty of driver in case of accident and injury to a person:**
> (a)…
> (b)...
> (c) Give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:-
> (i) insurance policy number and period of its validity;
> (ii) date, time and place of accident;
> (iii) particulars of the person injured or killed in the accident;
> (iv) name of the driver and the particulars of his driving licence.
> Explanation:- For the purpose of this Section, the expression "driver" includes the owner of the vehicle."

13. In view of the above provision, I find substance in the submission of learned counsel for the appellant-Insurance Company that the Insurance Company cannot be held liable and there is a breach of policy.

14. I have considered the findings recorded by the Tribunal in respect of the quantum of the compensation. There is oral and documentary evidence on record led by the claimants. I do not find that there is any serious flaw in the findings recorded by the Tribunal. The objection of the Insurance Company in respect of quantum arrived at by the Tribunal stands overruled. I, therefore, pass following order:

ORDER

(i) Both First Appeals are allowed.

(ii) Impugned judgments and awards passed by the Court below are quashed and set aside to the extent of imposing liability upon the appellant-Insurance Company for the payment of compensation in both the proceedings.

(iii) It would be open for the appellant-Insurance Company to recover the amount from the owner of the vehicle in accordance with law.

(iv) In view of final disposal of the appeals, the balance amount, which is lying with this Court in both the appeals shall be disbursed to the claimants with accrued interest.

(SHAILESH P. BRAHME, J.)

mkd/-