

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 79 OF 2005

- | | |
|---|---|
| 1. Chandrakant Raghunath Chavan |] |
| Age about 34 years, Occ. Driver, |] |
| R/o. At and Post – Lovale, |] |
| Taluka - Sangammeshwar, Dist – Ratnagiri. |] |
| (Driver of the Truck). |] |
| 2. Chetana Chandrakant Chavan, |] |
| Age about 32 years, Occ: Business, |] |
| R/o., At and Post – Lovale, |] |
| Taluka – Sangmmeshwar, Dist – Ratnagiri. |] |
| (Onwer of the Truck). |] |

.... **Appellants**
(Original
Opponents
Nos.1 & 2.)

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Versus

- | | |
|---|---|
| 1. Rohidas Ganpat Killekar, |] |
| Age about 52 years, Occ: Carpentry Work |] |
| 2. Rohini Rohidas Killekar, |] |
| Age about 42 years, Occ: House Hold, |] |
| Both R/o, At and Post – Anjanvel, |] |
| Taluka – Guhagar, Dist – Ratnagiri. |] |
| 3. Pratima Pandurang Mohile, |] |
| Age about 26 years, Occ: Business, |] |
| R/o, At and Post – Teruburambi, |] |
| Taluka – Sangmmeshwar, Dist – Ratnagiri |] |
| (Driver of the Auto Rickshaw) |] |
| 4. Pralhad Dashrath Chavan, |] |

Respondent
Nos.1 & 2
Original
Applicants

- | | | |
|---|---|-------------------------|
| Age about 37 years, |] | |
| R/o. 4143, Killa, Tal & Dist – Ratnagiri |] | |
| (Owner of Auto Rickshaw) |] | |
| 5. The New India Assurance Company Ltd., |] | |
| Policy No.152200/31/01/07033 |] | |
| Validity Period of policy from 5/12/2002 to |] | |
| 4/12/2000. Notice to be served through, |] | |
| The Branch Manager, |] | |
| The New India Assurance Co. Ltd, |] | |
| Naik Complex, Maruti Mandir Ratnagiri. |] | |
| Tal. & Dist. Ratnagiri |] | |
| (Insurer of the Truck) |] | |
| 6. National Insurance Company Ltd., |] | |
| Policy No.270803/2001/6702873 |] | |
| Validity Period of Policy from 11/9/2001 to |] | |
| 10/09/2002. Notice to be served through, |] | Respondent |
| The Branch Manager, |] | Nos.3 to 6 |
| National Insurance Co. Ltd., |] | Original |
| Ratnagiri Branch, |] | Opponents |
| R/o. 2811, Subhash Road, Ratnagiri, Tal. & |] | |
| Dist. Ratnagiri. |] | |
| (Insurer of the Auto Rickshaw) |] | |
| | | Respondents |

**WITH
FIRST APPEAL NO. 80 OF 2005**

- | | |
|---|---|
| 1. Chandrakant Raghunath Chavan |] |
| Age about 32 years, Occ. Driver, |] |
| R/o. At and Post – Lovale, |] |
| Taluka - Sangammeshwar, Dist – Ratnagiri. |] |
| (Driver of the Truck). |] |
| 2. Chetana Chandrakant Chavan, |] |
| Age about 30 years, Occ: Business, |] |
| R/o., At and Post – Lovale, |] |
| Taluka – Sangmmeshwar, Dist – Ratnagiri. |] |
| (Onwer of the Truck). |] |

.... Appellants
(Original
Opponents
Nos.1 & 2.)

Versus

- | | |
|--|---|
| 1. Smita Shrikant Wadkar, |] |
| Age about 36 years, Occ: Household. |] |
| 2. Mohini Shrikant Wadkar, |] |
| Age about 17 years, Occ: Education, |] |
| 3. Supriya Shrikant Wadkar, |] |
| Age 15 years, Occ: Education, |] |
| 4. Minakshi Shrikant Wadkar |] |
| Age about 13 years, Occ: Education |] |
| 5. Siddheshwar Shrikant Wadkar, |] |
| Age about 13 years, Occ: Education |] |
| 6. Shivram Shankar Wadkar, |] |
| age about 73 years, Occ. Nil, |] |
|
All R/o. Nidhalewadi, Post Orarkhoi, |] |
| Taluka Sangameshwar, Dist. Ratnagiri |] |
|
(Applicants Nos.2 to 5 through their mother, |] |
| Applicant No.1 as their natural guardian). |] |
| 7. Pratima Pandurang Mohite, |] |
| age about 24 years, Occ: Business, |] |
| R/o. Tere Burambi, Taluka Sangameshwar, |] |
| Dist. Ratnagiri, (Driver of the Auto – |] |
| Rickshaw) |] |
| 8. Pralhad Dashrath Chavan, |] |
| age about 35 years, Occ: Rickshaw Driver, |] |
| R/o. 4143, Killa, Taluka and Dist. Ratnagiri, |] |
| (Owner of the Auto – Rickshaw). |] |
| 9. The New India Assurance Co. Ltd. |] |
| Policy No.152200/31/01/07033. |] |
| Validity Period of Policy from 05/12/2001 to |] |

04/12/2002.]

Notice to be served through,]
 The Branch Manager,]
 The New India Assurance Co. Ltd.]
 Naik Complex, Maruti Mandir, Ratnagiri,]
 Taluka and Dist. Ratnagiri,]
 (Insurer of the Truck).]

10. National Insurance Company Limited,]
 Policy No.270803/2001/6702873]
 Validity Period of Policy from 11/09/2001 to]
 10/09/2002.]

Notice to be served through,]
 The Branch Manager,]
 National Insurance Company Limited,]
 Ratnagiri Branch,]
 R/o. 2811, Subhash road, Ratnagiri,]
 Taluka & Dist. Ratnagiri.]
 (Insurer of the Auto-rickshaw.]

.... Respondents
 (Respondent
 Nos.1 to 6
 Original
 Applicants
 and
 Respondent
 Nos.7 to 10
 Original
 Opponents.

Mr. Somnath Thenal a/w Mr. R. M. Haridas, Advocate for the Appellants in both appeals.

Mr. Mohan Devkule i/b Mr. Rakesh Bhatkar, Advocate for Respondent No.2.

Ms. Namrata Pangam i/b Ms. Jyoti Chavan, Advocate for Respondent Nos.3 & 4.

Ms. Sneha S. Dwivedi, Advocate for Respondent No.5.
Ms. Shalini Shankar, Advocate for Respondent No.6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JULY, 2025.

JUDGMENT. :

1. Both these appeals are preferred by the Appellants against the judgment and order passed by the Motor Accident Claims Tribunal, Ratnagiri (for short, “the Tribunal”).
2. The issues involved in these appeals are same, hence, I am deciding it by this common judgment.
3. It is contention of learned counsel for the Appellants that the Appellants are original driver and owner of the offending vehicle. The Tribunal has passed pay and recover order, on the ground that the Appellant No.1 was not holding effective and valid driving licence at the time of accident, which is erroneous. Learned counsel further submitted that, at the time of accident, the offending vehicle was insured with the Insurance Company. The Tribunal should have directed the insurance company to pay the compensation, but the Tribunal has passed pay and recover order, which is erroneous. Hence, requested to allow the appeals.

4. It is contention of learned counsel for all the Respondents that, the Tribunal had directed the Original Respondent No.1 to produce the driving licence, but the Original Respondent No.1 failed to produce it before the Tribunal. On that ground, the Tribunal has passed pay and recover order, which is legal and valid, no interference is required in it, and requested to dismiss both the appeals.

5. I have heard all learned counsel, perused the judgment and order passed by the Tribunal.

6. In paragraph No. 37 of the judgment, the Tribunal has observed that the Original Respondent No.1 was directed to remain present before the Tribunal and produce the driving licence, but Original Respondent No.1 failed to appear before the Tribunal and failed to produce the driving licence. On that ground, the Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, when the specific direction was given to Original Respondent No.1 to produce the driving licence, he failed to produce it. It proves that, he was not holding effective and valid driving licence at the time of accident. There was breach of terms and conditions of insurance policy. Hence, I do not find merit in the appeals, and I pass

following order:

ORDER

- i. Both Appeals are dismissed.
 - ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. Record and Proceedings be sent back to the Tribunal.
7. All pending interim & civil applications, if any, also stand disposed of.

(SHIVKUMAR DIGE, J.)