

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 639 OF 2024

Reliance General Insurance Co. Ltd.
4th Floor, Chintamani Avenue,
Goregaon (East), Mumbai – 400 063. Appellant

V/s.

- 1) Smt. Girija Subramanian Iyer
@ Girija Subramanian Mani,
Age : 67 years, Widow of the deceased
- 2) Mr. Karteek Subramanian Iyer,
Age : 41 years, Son of deceased,
Both are R/o. A-3, Flat No.2,
Veena Nagar, LBS Marg, Mulund (West),
Mumbai – 400 080.
- 3) J.S.K. Tours and Travels
254/8, III, Alka Mansion,
Dr. Ambedkar Road, Sion (West),
Mumbai, Maharashtra – 400 022
(Owner of the Motor Car)
- 4) Mr. Sonukumar Lekho Yadav,
Galli No.1, Near Kopari Bridge,
Anand Nagar, Dist. Thane.
(Driver of the Motor Car) Respondents

Mr. Avesh A. Ghadge i/b. Mr. Akshay Kulkarni for the Appellant.
Mr. T.J. Mendon for Respondent No.1. and Respondent No.2.
Mr. Sukand Kulkarni for Respondent No.3.

CORAM : SHYAM C. CHANDAK, J.

**RESERVED ON : 05th MAY, 2025
PRONOUNCED ON : 08th MAY, 2025**

JUDGMENT :-

. Present Appeal under Section 173 of the Motor Vehicles Act, 1998 (“**the Act**”) is preferred by the Appellant being aggrieved and dissatisfied with the Judgment and Order dated 28/03/2023, in Application No.2076 of 2019 (“**claim**”), passed by the Motor Accident Claims Tribunal, Mumbai (“**Tribunal**”) thereby the said claim was allowed with costs and Respondent No.3/Original Opposite Party and the Appellant/Insurer held jointly and severally liable to pay the Respondent Nos.1 and 2 (“**Claimants**”) a sum of Rs.27,84,400/- inclusive of NFL with interest @ 7% p.a. from the date of the claim till realization.

2) Mr. Mendon, the learned Advocate for the claimants submitted the compilation of documents. Respondent No.4-Driver of the offending vehicle was not held liable to pay the compensation. Therefore, the learned Advocate for the parties submitted that the notice to Respondent No.4 may be dispensed with and the Appeal may be taken up for final hearing at the stage of admission itself. Hence, the notice is dispensed with and the Appeal is taken up for final hearing.

3) Heard Mr. Ghadge, learned Advocate for the Appellant, Mr. Mendon, the learned Advocate for Respondent Nos.1 and 2 and Mr. Kulkarni, learned Advocate for Respondent No.3.

4) The facts in brief are that the claimants are the widow and major son of late Mr. Subramanian (“**deceased**”). The said claim was filed by the Claimants wherein they averred that on 03/09/2019, at about 14:50 hours, on Eastern Freeway of Southern Flank, Chembur, when the deceased was proceeding in Maruti Motor Car (Wagon R) bearing registration No.MH-01-CJ-0199 (“**Car No.0199**”), said Car No.0199 dashed against the rear side of a Motor Car No.HR-12-Z-4285 (“**Car No.4285**”) which was proceeding ahead of the Car No.0199. Due to said impact, the Car No.0199 turned turtle and the deceased sustained serious head injury. It was averred that the accident occurred due to rash and negligent driving of the the Car No.0199. The deceased was removed to Shatabdi Hospital, where he succumbed to the injuries on 03/09/2019, while under treatment. An FIR was lodged by Mr. Navin Juneja at RCF Police Station, Mumbai *vide* C.R.No.257/2019 for the offences punishable under Sections 279 and 304-A of the Indian Penal Code against the driver of the Car No.0199.

4.1) The deceased was working as a Senior Manager with Applied Research International Pvt. Ltd. (“**the Company**”) thereby he was earning income of Rs.75,000/- per month. The deceased was the only earning member of the family. Therefore, the claimants prayed to award Rs.20,00,000/- with interest @ 18% per annum.

5) Despite notice, Respondent No.3 did not file his appearance and the claim proceeded *ex-parte* against him. Respondent No.4 was also served with the notice but he did not file his appearance. The Appellant resisted the claim by filing the written statement (Exh.20). The Appellant denied that the Car No.0199 was involved in the accident; that, the accident occurred due to rash and negligent driving of the Car No.0199; and that, the deceased was working and earning as above. It was contended that, Respondent No.4 was not holding valid and effective driving license to drive the Car No.0199. As such, there was willful breach of the policy terms and conditions by Respondent No.3. Therefore, the claim be dismissed with costs.

6) Hence, the Tribunal framed the issues. To prove the claim, Respondent No.1 adduced her evidence on Affidavit (AW1/Exh.18) and examined Mr. Meghraj Ratnakar Desai (AW2/Exh.38), who has been a Project Manager in the said Company. Besides, the claimants have relied upon various documents in evidence.

7) In rebuttal, the Appellant presented the evidence of DW1-Shaun Henry James (Exh.50), Associate Legal Manager, who has been working in Claims Department of the Appellant. Besides, the Appellant relied upon the insurance policy and the policy terms and conditions (Exh.51 colly), letter dated 08/12/2022 issued to

Respondent No.3 along with the postal receipt (Exh.52 colly.) and the RTO letter dated 18/01/2023 (Exh.53).

8) It is settled law that the Claimants have merely to establish their case on the strength of preponderance of probability. The standard of proof beyond a reasonable doubt cannot be applied before the Tribunal.

9) On the point of the accident, the evidence of Respondent No.1 is that the accident occurred due to rash and negligent driving of the Car No.0199, but she was not an eye witness to the accident. Therefore, the FIR (Exh.21) and Spot Panchanama (Exh.22) are significant to answer the question of the negligence.

9.1) In the FIR (Exh.21), the informant – Mr. Navin Juneja has categorically stated that at the relevant time and place, he was driving the Car No.4285. The Car No.0199 came from behind, driven in a rash and negligent manner and dashed to the rear right side of his car. The Spot Panchanama indicates that the road where accident occurred was straight and sufficiently wide. However, it is not clarified by the Appellant as to why the Car No.0199 dashed the informant's Car. All these circumstances indicate that Respondent No.4 did not keep a proper lookout on the road while driving the Car No.0199, which ultimately caused the accident. Hence, I hold that this is the clear case of rash and negligent driving.

10) The evidence of AW1 and AW2 is that at the time of accident, the deceased was working as a Senior Manager, in Administration Department of the said Company on a monthly salary of Rs.73,983/-. This evidence is supported with the Appointment Letter dated 01/12/2001 (Exh.40), salary slips for the months of January, 2019 to September, 2019 of the deceased (Exh.41 colly.) and Form No.16-A (Exh.42 colly.). The aforesaid oral and documentary evidence did not see sufficient challenge. There is nothing on record to doubt the genuineness of the contents of the said documents. On the basis of said evidence, the Tribunal held that the average monthly salary income of the deceased was Rs.66,585/- (Rs.73,983/- – TDS Rs.7,398/-), which was yearly Rs.7,99,020/-. Out of the said amount, the Tribunal deducted Rs.2,66,340/- ($\frac{1}{3}^{\text{rd}}$), towards the personal and living expenses of the deceased. Accordingly, the multiplicand was taken as Rs.5,32,680/-. The deceased was aged 71 years as per his date of birth, i.e., 13/09/1947, recorded on the Aadhaar Card (Exh.34) and Pay Slips (Exh.42). Hence, the Tribunal took the multiplier of '5' and quantified the loss of the dependancy at Rs.26,63,400/-. Additionally, the Tribunal awarded Rs.44,000/- to each claimant as 'Spousal' and 'Parental' consortium respectively, Rs.16,500/- as the 'loss of estate' and Rs.16,500/- as the 'funeral expenses'. Thus, the Tribunal awarded a sum of Rs.27,84,400/-. This

quantification is in abidance with the decisions in :-

- (i) *National Insurance Co. Ltd. vs. Pranay Sethi and Others*¹,
- (ii) *Sarla Verma and others vs. Delhi Transport Corporation and another*², and
- (iii) *Magma General Insurance Co. Ltd. vs. Nanu Ram Alia Chuhru Ram & ors.*³.

11) Insofar as the liability is concerned, in the written statement, the Appellant contended that Respondent No.4 had no valid and effective driving license at the time of accident. Therefore, the Appellant was not liable to pay the compensation. In this regard, the evidence of DW1 is that he has been aware of the facts and circumstances of this case. By a registered letter dated 08/12/2022 (Exh.52 colly.), the Appellant called upon Respondent No.3 to produce the driving licence of Respondent No.4 and other relevant documents. This evidence is corroborated with the letter and the postal registration receipt (Exh.52 colly.). The address of Respondent No.3 stated in this letter tallies with his address on the *Vakalatnama* filed by his learned Advocate Mr. Sukand Kulkarni and his address stated in the insurance policy. The same address has been stated in the cause-title of the claim on which the notice of the claim was served upon Respondent No.3. As per the investigation carried out by

1 2009 ACJ 1298 (SC).

2 2017 ACJ 2700 (SC).

3. 2018 ACJ 2782 (SC).

the Appellant, Respondent No.4 was holding the motor driving license No.JH0220170002239, allegedly issued by the RTO Hazaribag, Jharkhand, but the said license was fake as per the letter dated 18/01/2023 (Exh.53) received from the RTO Hazaribag. This evidence is supported with the payment receipt of Rs.200/- (Exh.52) issued by the RTO. The receipt is in the name of one Mr. Sonu Kumar, i.e., Respondent No.4, but it appears to be a mistake.

12) In the case of *Pappu and Ors. vs. Vinod Kumar Lamba and Anr.*⁴, Respondent No.1 – the owner of the offending vehicle merely raised a vague plea in the written statement that the offending vehicle DIL-5955 was being driven by a person having valid driving license. He did not disclose the name of the driver and his other details. Besides, Respondent No.1 did not enter the witness box or examine any witness in support of this plea. Respondent No.2 – Insurance Company in the Written Statement had plainly refuted that plea and also asserted that the offending vehicle was not driven by an authorized person and having valid driving license. Respondent No.1 – owner of the offending vehicle did not produce any evidence except a driving license 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

4. 2018 ACJ 690 (SC).

relevant time. Therefore, the Tribunal allowed the application in part and it absolved the insurance company by dismissing the claim petition against it. The High Court affirmed the view taken by Tribunal. In this background the Hon'ble Supreme Court held that,

“... Merely producing a valid insurance certificate in respect of the offending Truck was not enough for the respondent No.1 to make the Insurance Company liable to discharge his liability arising from rash and negligent driving by the driver of the 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 license. 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 license 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.”

12.1) However, to subserve the ends of justice, it was directed that the Insurer shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same

from the owner of the vehicle in accordance with law.

13) In the case of ***Nirmala Kothari vs. United India Insurance Co. Ltd.***⁵, the Hon'ble Supreme Court observed that., “... ***In the case of United India Insurance Co. Ltd. vs. Lehu & Ors.***⁶ a two Judge Bench of this court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established.’ Then the Hon'ble Supreme Court considered the decision in ***Pepsu Road Transport Corp vs. National Insurance Co. Ltd.***⁷ therein in it is observed and held as under :-

‘8. In a claim for compensation, it is certainly open to the insurer under Section 149 (2) (a) (ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable

5. AIR 2020 SC 1193

6. (2003) 3 SCC 338

7. 2013 ACJ 2440

care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation.

13.1) In ***Nirmala Kothari*** (supra) in paragraph 10 the Hon'ble Supreme Court observed that, "... It has been categorically held in the case of ***National Insurance Co. Ltd vs. Swaran Singh & Ors.***⁸ that,

"110. (iii)...Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the

8. (2004) 3 SCC 297.

insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time.”

13.2) Then in paragraph 11 the Hon’ble Supreme Court held that,

“11. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.”

14) In the case in hand, the accident occurred on 03/09/2019, but the letter (Exh.52) was not sent to Respondent No.3 immediately after the accident, but on 08/12/2022. The letter (Exh.53) received from the RTO Hazaribag only states that the alleged driving license No.JH0220170002239 was not issued in the name of Sonu Kumar-Respondent No.4. However, said letter by the RTO cannot be treated as the photocopy of the driving licence in dispute. There is no evidence as to who gave the details of the said licence to the Investigator of the Appellant to submit an application with the RTO Hazaribag to get the information about the genuineness or otherwise of the license. It is not the case that said information was given by the police who investigated the crime registered on account of this accident and the same information was supplied to the RTO Hazaribag for the purpose of the information contained in its letter (Exh.53). In fact, there is no evidence as to whether the said Investigation Officer-police had verified the genuineness of the said licence or not. For these reasons, it cannot be held that, at the time of the accident, Respondent No.4 was using the driving licence No.JH0220170002239 and the same licence he had shown to Respondent No.3, to employ him as the driver. Consequently, it cannot be held that Respondent No.3 was aware of the said licence, he knew that the licence was fake, and that he had an opportunity to

verify that licence, yet, he appointed the Respondent No.4 as the driver.

14.1) In view of the above discussion and the reported decisions considered in the forgoing paragraphs, I hold that the learned Member of the Tribunal rightly held that the Appellant failed to prove that Respondent No.4 was holding a fake driving licence and there was a fundamental breach of the policy terms and conditions. Consequently, the Appellant and Respondent No.3 both are jointly and severely liable to pay the compensation quantified above.

15) The necessarily corollary of the above discussion is that the impugned Judgment and Award is based on appreciating the evidence on record in its correct perspective and therefore, it does not call for any interference by this Court. Thus, there is no substance in the Appeal and the Appeal is liable to be dismissed and is dismissed, accordingly.

**PREETI
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(SHYAM C. CHANDAK, J.)