IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 76 OF 2024

HDFC Ergo General Insurance Company Ltd.
1st Floor, 165-166, Backbay Reclamation
H.T.Parekh Marg, Churchgate, Mumbai – 400020 … Appellant

Versus

1 Neelima Rakesh Gandhi
Age : 56 Years, Widow of the deceased

2 Ritika Rakesh Gandhi
Age : 25 Years, Daughter of the deceased

3 Vishaka Rajnikant Gandhi
Age : 80 Years, Mother of the deceased
Resp. Nos. 1 to 3 are residing at
Wadavli Village, Dr. C.G.Road,
Jari Mari Mandir, Chembur Camp,
FCI SO., Mumbai - 400074

4 Ashraf Mohammed Abdul
Adult,
Old Balaji Nagar, Ambernath (W),
District : Thane, 421 505
Owner of M/Cycle No. MH-01-AZ-2123 … Respondents

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Mr. Sarthak S. Diwan a/w. Ms. Snehal Jadhav, Advocates for the Appellant.
Mr. Jitendra Gor, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.
DATED : 15th JANUARY, 2025.

ORAL JUDGMENT :

1. The issue involved in this appeal is driver of offending vehicle was not holding effective and valid driving licence.

2. It is contention of learned counsel for the appellant / Insurance Company that at the time of accident driver of offending vehicle was not holding effective and valid driving licence. The chargesheet was filed against the driver of offending vehicle under said Section but this facts is not considered by the Tribunal.

3. It is contention of learned counsel for the claimants that no evidence was led before the Tribunal by the appellant – Insurance Company nor any person from the RTO was examined to prove that the driver of offending vehicle was not holding effective and valid driving licence. The Tribunal has passed well reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal"). Though the appellant -Insurance company has taken the defense that at the time of accident driver of offending vehicle was not holding effective and valid driving licence but no evidence was produced on record to prove the said fact. It is contention of learned counsel for the appellant that chargesheet was filed against the driver of offending vehicle for not holding effective and valid driving licence. In my view, it is settled law that mere filing chargesheet cannot be a ground to hold that driver was not holding effective and valid driving licence.

As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 of 2019,*** it is onus on the party to prove the defence taken by him by producing substantive evidence. In the present case, the appellant failed to prove by examining person from the RTO office that driver of offending vehicle was not holding effective and valid driving licence.

5. Considering above reasons, appeal is devoid of merit and, I pass following order.

ORDER

i. The appeal is dismissed.

ii. The respondent Nos. 1 to 3 /claimants are permitted to withdraw the compensation amount along with accrued interest thereon deposited by the appellant-Insurance Company.

iii. The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.

iv. Pending interim applications, if any, stand disposed of.

v. R & P be sent back to the Tribunal.

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2025.01.22 12:02:34 +0700

(SHIVKUMAR DIGE, J.)