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

## FIRST APPEAL NO. 1766 OF 2024



| | | |
|---|---|---|
| Bajaj Allianz General Insurance Co. Ltd., Rustamji Aspire, Behind Honda Showroom, Near Everad Tower, Sion Chunnabhatti Mumbai-400022 Policy No. OG-20-1911-1803-00002020 Valid From 09.10.2019 to 08.10.2019. | ] | .... **Appellant (Original Respondent No.2)** |

**Versus**

| | | | |
|---|---|---|---|
| 1. | Mahesh Nagesh Ghodke Age: 41 years, Residing at Near Police Camp Room No.33, Ramabai Ambedkar Nagar Omkar Seva Sangh, Marol Marshi Road Andheri (E), Mumbai – 400059. | ] | **Original Claimant** |
| 2. | Shantilal Velji Gala Address-Prop Prashant Enterprises 101, yashoda, Bhavan CHS, Kasturba Road No.9, Near Bank of India, Boriwali (E) Mumbai- 400066 Owner of motor Dumper No. MH-47-Y-8444. | ] | **Original Respondent No.1** |
| | | | .... **Respondents** |

-----

Mr. Sarthak S. Diwan a/w Mr. Aditya Ghadge, Advocate for the

Appellant.
Mr. Nikhil Mehta i/b KMC Legal Venture, Advocate for Respondent No.1.

-----

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 24th JULY, 2025.**

**JUDGMENT. :**

1. This Appeal is preferred by the Appellant-Insurance Company against judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short, “the Tribunal”).

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the driving license produced on record was fake. The Appellant had produced evidence in that regard before the Tribunal, but the Tribunal has not considered this fact. There was breach of Terms and Conditions of the Insurance Policy. The learned counsel further submitted that the accident occurred due to sole negligence of the Claimant. The learned counsel further submitted that the permanent physical disability shown by the Claimant is on higher side, and on that basis, compensation is awarded, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.1

- Claimant that, the Tribunal has passed well reasoned order on the basis of the evidence produced on record, no interference is required in it and requested to dismiss the Appeal.

4. Though Respondent No.2 is served, none present for Respondent No.2. It appears from record that, Respondent No.2 did not appear before the Tribunal, hence I am deciding this matter on merit.

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

6. It is Claimant's case that, on $22^{nd}$ August 2023 at about 9.15 hours, the Claimant was riding his motorcycle with care and caution in moderate speed. When he came opposite bridge of Sion Hospital gate No.7, Sion at that time, offending motor dumper bearing No MH-47-Y-8444 came with high speed in rash and negligent manner and gave dash to the motorcycle. Due to said dash, the Appellant fell down on the road and sustained injuries, back side left wheel of the offending motor dumper ran over his left hand. Left hand of the Claimant was broken along with Chest fracture with Grade-IVC crush injury with muscle loss, traumatic amputation of (Lt.) arm. Due to accidental injuries, he has suffered

50% permanent physical disability.

7. It is contention of the learned counsel for the Appellant-Insurance Company that, there was breach of Terms and Conditions of Insurance Policy.

8. To prove the defence, the Appellant has examined DW-1 Shrusti K. Kulkarni, Legal Officer of the Insurance Company at Exhibit-53. She has stated that, the vehicle bearing MH-47-Y-8444 was covered at the material time with their Insurance Company. She further submitted that, as per Police papers, the driver of the insured vehicle was one Mr. Jivardhan Mahto, who was driving the insured vehicle. She further stated that as per driving license copy bearing No. JH11 2017/0064785. The Insurance Company had issued summons to Transport Officer DTO, Giridh Jharkhand and same was duly served. The Appellant received information about driving licence from DTO Giridh, Jharkhand. As per driving license extract, it is mentioned that, the driving license bearing No. JH11 2017/0064785 in the name of Mr. Jivandhan Mahto was not issued by the concerned Authority of DTO Giridh.

9. She further stated that the Appellant had appointed Investigator to investigate the matter. The Investigator met the driver

of offending Vehicle Shri. Jivandhan Mahto and he provided copies of the Aadhar card, Pan card and driving license, which bears No. JH11 2017/0349820. The Appellant-Insurance Company also called veracity of the said driving license. The DTO, Giridh said that, the said driving license is not issued by them. It shows that, both driving license of the driver of the offending vehicle were fake. This witness further stated that, as per Section 134 of the Motor Vehicle Act, 1988 (for short “M.V. Act”), notice was sent to the driver about producing particulars of the driving license. After receiving notice, no reply is given.

10. In cross-examination, this witness admitted that the notice at Exhibit-58 issued on 23rd December 2020, and acknowledgment receipt is not produced on record. She admits that, if there is breach of Terms and Conditions of the Insurance Policy, the Insurance Company has to pay first and recover after.

11. It is contention of learned counsel for the Appellant that the accident occurred due to contributory negligence of the deceased, but no evidence is produced on record in that regard, hence, I do not find merit in it.

12. It is contention of learned counsel for the Appellant that

due to accidental injuries, the Claimant has suffered 50% permanent physical disability. The Tribunal has considered disability on higher side without any evidence on record. In my view, it has come on record that due to accidental injuries, the Claimant has suffered amputation of left arm below shoulder, and he was working as a contractor, but it has come on record that because of amputation of hand, he has lost his job. Hence, his functional disability is 100%. Hence, I do not see merit in contention of learned counsel for the Appellant about higher disability.

13. While dealing with the issue of driving license, the Tribunal has observed that, the Appellant-Insurance Company has not examined Investigator to prove its case, and on that basis, the Tribunal has fixed liability on the insurance company. In my view, Exhibit – 55 is the report given by the Investigator annexed with the copy of R.T.O. and the extract of R.T.O., Giridh, showing that the said office had not issued licence in the name of Jeevdhankumar Mehto. But, the Respondent Nos.1 & 2 did not rebut this fact before the Tribunal nor they lead any evidence in support of their defence.

When it has come on record that the driving licence of the driver of offending vehicle produced on record was not issued by the concerned R.T.O. It proves that driving licence produced on record was fake and fabricated. There was breach of terms and condition of insurance policy. Hence, insurance company is liable to pay compensation to the Claimant awarded by the Tribunal and recover it from the owner of the offending vehicle, and I pass following order :

**ORDER**

i. The Appeal is partly allowed.

ii. The Appellant – Insurance Company shall pay the compensation awarded by the Tribunal along with accrued interest thereon.

iii. The Appellant is at liberty to recover the compensation amount along with accrued interest from the owner of the offending vehicle.

iv. The Claimant is permitted to withdraw deposited amount along with accrued interest thereon.

v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rules.

vi. The Claimant shall pay the deficit Court fees, if any, as per Rules.

vii. Record and Proceedings be sent back to the Tribunal.

14. All pending applications, if any, also stand disposed of.

**( SHIVKUMAR DIGE, J.)**