

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO. 1914 OF 2024**

Divisional Manager
HDFC ERGO General Insurance Company Ltd.
Thane Divisional Office, 4th Floor Lake City Mall,
Kapurbawadi Naka, Thane (W), District : Thane ... Appellant

Versus

- 1 Kantaram Kusha Paradhi
Age : 44 Years, Occu : Nil
R/at. Kalyan Nagar, Highway Ganeshpur,
Post – Moroshi Taluka :- Murbad, Dist : Thane
- 2 Tushar Shivaji Thorat
R/at : Vaishnav Complex, At Post Otuur,
Taluka : Junnar, District : Pune – 412409 ... Respondents

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Mr. Sarthak S. Diwan a/w. Ms. Snehal Jadhav, Advocates for the Appellant.

Ms. Rina Kundu, Advocate for Respondent No. 1.

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 fact is not considered by the Tribunal.

3. It is contention of learned counsel for respondent No. 1 claimant 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, Kalyan (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 No. 1 /claimant is 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.

(SHIVKUMAR DIGE, J.)