IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.862 OF 2017

APPELLANT (Ori. Res. No.3)	:		**Bharti AXA General Insurance Co. Ltd.**, Through its Branch Manager, Branch at 222 'B' Block, Vishnu Vaibhav Complex, Above ICICI Bank, Civil Lines, Palm Road, Nagpur. ... On R.A.
			..VERSUS..
RESPONDENTS (Ori. Petitioner No.1) Respondent No.1 deleted as per the Hon'ble Court Order dated 27.02.2025.	:	1	**Smt. Changonabai Wd/o Gajanan Bhagat**, Aged about 67 years, Occ.: Household (Deleted)
(Ori. Petitioner No.2)		2	**Narendra S/o Gajanan Bhagat**, Aged about 47 years, Occ.: Labourer
(Ori. Petitioner No.3)		3	**Vijay S/o Gajanan Bhagat**, Aged about 43 years, Occ.: Labourer, All R/o: Sant Chokhoba Ward, Hinganghat, Tah.: Hinganghat, Distt.: Wardha.
(Ori. Res. No.1)		4	**Digambar S/o Pandurang Yelmunde**, Aged Adult, Occ.: Driver, R/o: Pathar, Tah.: Samudrapur, Distt.: Wardha.
(Ori. Res. No.2)		5.	**Amar S/o Madhusudan Nande**, Aged Adult, Occ.: Owner of Vehicle, R/o: Pathar, Tah.: Samudrapur, Distt.: Wardha.

Mr R. D. Bhuibhar, Advocate for Appellant.
Mr M. V. Rai, Advocate for Respondent Nos.1 to 3.
Mr R. M. Tahaliyani, Advocate for Respondent Nos.4 and 5.

CORAM : M. W. CHANDWANI, J.

DATED : 16th APRIL, 2025.

ORAL JUDGMENT

1. Heard.

2. The appeal challenges the award dated 08.03.20017 passed by the Motor Accident Claims Tribunal, Wardha, in Claim Petition No.108 of 2015, thereby granting a compensation of Rs.2,15,000/- to the claimants on account of death of Gajanan Bhagat in a vehicular accident that occurred on 21.12.2013.

3. This appeal is filed mainly on two grounds; Firstly, that the Tata Ace vehicle bearing No.MH-32-Q-3903 insured with the appellant/Insurance Company was not involved in the alleged accident wherein Gajanan Bhagat died; and secondly, that the driver of the offending vehicle did not hold a valid and effective driving licence.

4. Mr. R. D. Bhuibhar, learned counsel appearing on behalf of the appellant submitted that initially, the First Information Report as well as the Spot Panchanama recorded the registration number of the Tata Ace vehicle as MH-32/3604 and not MH-32-Q-3903 which clearly demonstrates that the vehicle insured with the appellant was not involved in the said accident. According to him, this aspect has not been considered by the Tribunal. He further

submitted that the Insurance Company has examined its officer and a clerk from the RTO office. Their evidence clearly demonstrates that the driver of the offending vehicle obtained the licence post-accident. Therefore, there is a willful default and breach of policy on the part of the insured. Consequently, the Insurance Company is not liable to pay the compensation granted by the Tribunal.

5. Per contra, Mr. M. V. Rai, learned counsel appearing on behalf of respondent Nos.2 and 3 vehemently submitted that although, the wrong vehicle number was initially provided, the investigation revealed that vehicle No.MH-32-Q-3903 insured with the appellant was indeed involved. According to him, it has not been proved anywhere that the driver of the offending vehicle has not obtained the driving licence prior to 2015. Therefore, the Tribunal has rightly held the non-applicants therein jointly and severally liable to pay the compensation.

6. Mr. R. M. Tahaliyani, learned counsel appearing on behalf of respondent Nos.4 and 5 submitted that it is the duty of the Insurance Company to prove willful default and the burden

which lies on it has not been discharged. According to him, the vehicle owned by respondent No.5 was not involved in the said accident at all and respondent No.4 was never the driver of the vehicle belonging to respondent No.5. Even if respondent No.4 had been stated as the driver working for respondent No.5, the Insurance Company failed to discharge the burden of proving the breach of policy much less willful breach. Therefore, he supported the Tribunal's judgment.

7. Having heard the learned counsels for the respective parties and having perused the record and the Tribunal's judgment, it transpires that the Tribunal has considered the evidence of the investigating officer as well as one of the eye witnesses who categorically stated that the Tata Ace vehicle bearing No.MH-32-Q-3903 was involved in the accident. Notably, the investigating officer after verifying from the RTO office, opined that vehicle No.MH-32-Q-3903 was indeed involved in the accident. No doubt, the Tata Ace vehicle No.MH-32/3604 is mentioned in FIR as well as in the spot Spot Panchanama. This discrepancy was clarified by the claimants' version corroborated by the investigating officer CW-2 Kishor and eye witness CW-3 Maroti. Therefore, the

Tribunal was right in holding the involvement of Tata Ace vehicle bearing No.MH-32-Q-3903 in the accident.

8. This takes me to the next submission of the learned counsel for the appellant regarding non holding of a valid and effective driving licence by the driver of the offending vehicle. The witness for the Insurance Company has categorically stated that apart from the offence of rash and negligent driving, the driver of the offending vehicle was also charged with the offence of not holding a valid driving licence which is evident from the final report submitted by the investigating officer in Crime No.469 of 2013 registered against the driver. No doubt, the burden is on the Insurance Company to prove that there is willful breach of the policy on the part of the owner of the vehicle. By examining the official from the RTO office, Wardha, it has been brought on record that the driver of the offending vehicle obtained a licence w.e.f. 10.09.2015 which presupposes that he did not hold a valid licence to drive the offending vehicle prior to 2015. Needless to mention that the accident occurred in 2013.

9. At this stage, the learned counsel for respondent Nos.4 and 5 vehemently submitted that the Insurance Company has not discharged its burden by proving willful default on the part of respondent No.5. Let me state that by examining a Clerk from the office of the RTO, it has been brought on record that on the day of accident, the driver of the offending vehicle was not holding a valid and effective driving licence. Respondent No.5 deposed that he does not know whether the driver was holding a valid driving licence. Rather, he has come up with a case of non-involvement of his vehicle and denial of the fact that respondent No.4 was the driver at the relevant time which has been dispelled by the Tribunal with cogent reasoning.

10. Once it has been pleaded by the Insurance Company that on the day of the accident, the driver of the offending vehicle did not possess a valid and effective driving licence coupled with the fact that the driver of the offending vehicle obtained a licence after the date of accident. It is for the respondent No.5 to prove that the driver was having a valid driving licence at the time of accident. A reference can be made to the decision of the Hon'ble Supreme Court in the case of ***Pappu and Others vs. Vinod Kumar Lamba and***

Another; ***(2018) 3 SCC 208***. In common parlance, any owner of a vehicle, particularly of a four-wheeler, is expected to verify whether the driver driving their four-wheeler possesses a valid driving licence. It is not the case of respondent No.5 that he was misled by respondent No.4 – the driver of the offending vehicle by demonstrating that he possessed a driving licence or fake licence was shown by him. Therefore, in my view, there was breach of a fundamental condition of the policy which the Tribunal failed to consider.

11. Needless to mention that it is the duty of the Insurance Company at first place to pay compensation to the claimants and recover the same from the owner of the vehicle. To that extent, the appeal succeeds. Consequently, the appeal is partly allowed. The impugned award is modified to that extent.

12. The appellant/Insurance Company is liable to pay the amount of compensation awarded by the Tribunal to the claimants and may recover the same from respondent No.5 - the owner of the offending vehicle.

13. The amount of compensation shall be paid to respondent Nos.2 and 3 equally alongwith accrued interest, since respondent No.1 - wife of deceased Gajanan Bhagat is reported to be dead.

14. In the above said terms the appeal is disposed of.

15. Accordingly, Civil Application No.2224 of 2021 stands disposed of.

(M. W. CHANDWANI, J.)

Tambe