

HIGH COURT BOMBAY

*Before : Justice Shivkumar Dige.*

**Shubhash Waman Baviskar v. Adinath Hambirrao Budhwant**

First Appeal No.410 Of 2016

**Motor Vehicles Act, S. 173 - Pay and Recover - Insurance Company exonerated on account of driver not holding a driving licence - Appeal by claimants for making insurance company liable - Section 173 states that any person aggrieved by an award of a Claims Tribunal can file Appeal - This Section empowers that any person can file Appeal so there is no need to consider who is aggrieved person - Appellants being Claimants have right to file Appeal - Though owner of offending truck has not challenged the impugned order, it cannot be said that the Claimants can't challenge it - Order in appeal changed to Pay and Recover.**

*Mr.Niketani Nakhawa, for the Appellants. Mr.Rajesh Kanojia a/w Ms.Nikita Singh i/b Res Juris, for Respondent No.2.*

JUDGMENT

**Shivkumar Dige, J.** - (18.04.2023) - The issue involved in this Appeal is exoneration of the Insurance Company from paying compensation.

2. It is contention of the learned counsel for the Appellant that the Tribunal has observed that there was breach of terms and conditions of Insurance Policy as driver of offending vehicle was not holding valid and effective driving licenses on the date of the accident and Insurance Company is not liable to indemnify, which is improper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that the Claimants cannot be considered as aggrieved party against the Insurance Company as the Claimants are only entitled for compensation in respect of accident caused and they are not suppose to see from whose pocket they are getting compensation. When there was breach of terms and conditions of Insurance Policy the Tribunal has right to decide who is liable to pay compensation.

4. The learned counsel further submits that as per Section 173 of Motor Vehicles Act (for short 'M.V. Act'), the Claimants cannot be considered as aggrieved party as against the Insurance Company. At the most owner of the offending vehicle can challenge the order passed by the Tribunal. Hence, requested to dismiss the Appeal.

5. He relied on Balu Krishna Chavan v. The Reliance General Insurance Co. Ltd.<sup>1</sup> and Biju R. & Ors. V. Vivekanandan and Ors.<sup>2</sup>.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor

Accident Claims Tribunal, Pune (for short 'the Tribunal').

7. The issue involved in this Appeal is whether the Claimants can challenge the order passed by the Tribunal regarding exoneration of Insurance Company.

8. It is Claimants case that on 23 November 2011 deceased Asha Baviskar was proceeding towards Hadapsar along with Claimant No.1 by riding on the motorcycle, as a pillion rider. Around 7.10 p.m. the motorcycle reached at the place of the accident, at relevant time a truck bearing No.MH-12/FC 7059 came in high speed from their backside and started overtaking their motorcycle. In the process of overtaking the motorcycle, the truck dashed the motorcycle. Due to said dash Asha fell on the road and she came under the left rear wheel of the truck. She sustained grievous injuries in the accident. She succumbed to the injuries before the treatment. The offence was registered against the driver of offending truck.

9. The Insurance Company took defense before the Tribunal that driver of offending truck was not holding effective and valid driving licenses at the time of the accident. It has come on record that driving licenses of the driver of offending vehicle was expired on 21 February 2011. While dealing with this issue the Tribunal has observed that driving licenses of the the driver of offending truck had expired four months prior to the date of the accident. There was no Application for renewal of licenses within 30 days.

10. It is contention of the learned counsel for the Respondent-Insurance Company that Appellants can't be considered as aggrieved party.

11. The Dictionary meaning of aggrieved person is "a person sufficiently harmed by a legal judgment, decree or order to have standing to prosecute an appellate remedy. Section 173 of M.V. Act reads as under:-

*"(1) Subject to the provisions of sub-section (2), any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court."*

This Section states that any person aggrieved by an award of a Claims Tribunal can file Appeal. This Section empowers that any person can file Appeal so there is no need to consider who is aggrieved person. The Appellants being Claimants have right to file Appeal.

12. It is contention of the learned counsel for Respondent-Claimants that as per view taken by Kerela High Court the person aggrieved is not defined under the M.V. Act and Claimants cannot be considered as aggrieved person for getting compensation from Insurance Company only.

13. In my view, admittedly, deceased died due to dash of the driver of the offending truck. At the time of the accident the offending truck was insured with the Insurance Company. There was contractual liability of the Insurance Company to indemnify the compensation. Driving licenses of the driver of the offending vehicle was not renewed at the time of the

accident. It doesn't mean that he was not skilled driver. Moreover, it is settled principle of law that if driver of offending vehicle was not holding effective and valid driving licenses at the time of the accident, Insurance Company has to pay compensation first and recover it from the owner of the offending vehicle. The Tribunal has not considered this fact and passed the order mechanically. Though owner of offending truck has not challenged the impugned order, it cannot be said that the Claimants can't challenge it. Hence, I hold that any aggrieved person can file the Appeal.

14. I have gone through the case laws cited by the learned counsel for the Respondent-Insurance Company. The facts of the cited cases are in respect of the compensation which the Claimant was legally entitled but not mentioned in the Claim Petition. The facts of cited cases and present case are different.

15. In view of above, I pass following order.

#### ORDER

(i) The Appeal is allowed.

(ii) The Respondent-Insurance Company shall pay compensation within six weeks after receipts of the order as directed by the Tribunal along with accrued interest thereon and recover it from the owner of the vehicle.

(iii) The Claimants are permitted to withdraw the deposited amount.

(iv) All pending Civil Applications, if any, are disposed of.