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IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.4 OF 2024

The National Insurance Co. Ltd,
Through its Sr. Divisional Manager
Mrs. Catarina L. Alvares,
56 years of Age,
Residing at 535/5 Mudda Vaddo,
Parra, Bardez Goa 403510

... Appellant

Versus

1. Mr. Muniyappa
S/o Mr. Yallappa
Aged 59 years, retired,

2. Mrs. Baby Latha alias Latha Muniyappa
w/o Mr. Muniyappa, aged 54 years,
housewife, r/o Flat no. 409
Tathastu Riviera Co-op Housing
Society Jairam Nagar, Dabolim, Vasco Goa.

Dismissed as
per Order dt.
9/2/2024

3. Mr. Pratik Kumar Singh
s/o Pankaj Kumar Singh
age 19 years
R/o 701, 7th floor ' Prime Heights,
Jairamnagar Alto Dablim
Mormugao Goa 403 801
(Driver of Maruti 800 Car
bearing no. MH-06-T-8154)

4. Mr. Shashikant Tukaram Chari
s/o. Tukaram Chari
age 50 year

r/o River view Enclave Villa 8,
Behind NSD opp. Kidzee School
Dabolim, Goa 403801
(Owner of Maruti 800 Car
Bearing No. MH-06-T-8154)

5. Mrs. Shruti Singh
D/o. Girish Singh
Age 46 years
R/o 701, 7th floor, ' Prime Heights,
Jairamnagar Alto Dablim
Mormugao Goa 403 801

... Respondents

Ms Yadika Mandrekar, Advocate *for the Appellant.*

CORAM: M.S. SONAK, J.

DATED: 9th May 2024.

JUDGMENT:

1. Heard Ms Yadika Mandrekar for the Appellant. The Respondents, though served, were neither present nor represented.
2. On 09.02.2024, Mr Timble, who appeared on behalf of the Appellant, submitted that the only issue which the Appellant Insurance Company presses in this Appeal is that the insured vehicle was driven by a person holding a learner's licence without being accompanied by an adult holding a regular licence. Accordingly, Mr Timble submitted that the Appellant would press for exoneration of the insurance company or a "pay and recovery" order.

3. Accordingly, on 09.02.2024, this Court made the following order:-

"1. Heard Mr. Timble, learned Counsel, who appears for the Appellant, Mr. Halarnkar, learned Counsel who appears for Respondent nos. 1 and 2 (claimants) and Mr. Gosavi, learned Counsel, who appears for Respondent nos. 3 and 5. Respondent no.4 is yet to be served in the matter though the Appellant has taken steps.

2. Mr. Timble, learned Counsel for the Appellant-Insurance Company, submits that the only issue which the appellant prays in this appeal is that the Tribunal ought to have made a "pay and recovery" order.

3. Mr. Timble elaborates that, in this case, the driver of the car claimed to have had a learner's licence. He submits that there is no evidence that such driver was accompanied by a proper licence holder. He submits that the evidence on record also shows that vehicle was not marked with 'L' signage to indicate that the same was being driven by a driver holding learner's licence. He submits that this amounts to a fundamental breach of the terms of the Insurance policy as was held by the Hon'ble Supreme Court in the case of Pappu & Ors vs. Vinod Kumar Lamba & anr. (Civil Appeal No.20962 of 2017 decided on 19.01.2018). Mr. Timble also relied upon the judgment of the Karnataka High Court in the case of The Divisional Manager vs. Revanasidda Naika & anr. (M.F.A. No. 5870 of 2009 (MV) decided on 16.04.2013) and the judgment of High Court of Chhattisgarh in the case of Oriental Insurance Company Limited vs. Bhagwati & Ors. (MAC No. 1237 of 2018, decided on 18.11.2021).

4. Mr. Halarnkar, learned Counsel, who appears for the claimants, firstly submits that since the appeal is now restricted to the issue of "pay and recover", there is no reason to admit this Appeal as against the Respondent nos. 1 and 2 i.e. the claimants.

He points out that the accident in this case took place on 31.12.2018 and since then, the claimants have not received any compensation except for the compensation under Section 140 of the Motor Vehicles Act.

5. *Mr. Halarnkar and Mr. Gosavi, learned Counsel submit that there is ample evidence on record to show that the driver was accompanied by his mother, who had a proper driving licence. They submit that even the contention of the signage may not be correct. They submit that, in any case, there was no fundamental breach of the terms of the Insurance policy. They submit that such a defence may not even be open to the Insurance Company. Mr. Gosavi and Mr. Halarnkar, learned Counsel relied upon the judgment of the Madras High Court in the case of National Insurance Co. Ltd. vs. Subranmani & Ors. reported in 2013(1) TN MAC 105.*

6. *Having considered the rival contentions, a case is made out for admitting the appeal against Respondent nos. 3 to 5 but dismissing the same as against Respondent nos. 1 and 2 (claimants).*

7. *Even if all the Appellant's contentions are accepted as correct, no case is made out to either deny or delay the payment of compensation to the claimants. Very fairly, even Mr. Timble urged that this appeal was restricted to the issue of making a 'pay and recover' order. This implies that the compensation amount will have to be paid by the Insurance Company to the claimants but with liberty to recover the same from the driver/owner. The issue as to whether such recovery can be permitted or not, would be decided at the final hearing of the appeal. But, there is no reason to admit this appeal against Respondent nos. 1 and 2 i.e. the claimants and delay the actual award of compensation in their favour.*

8. *Accordingly, this appeal is dismissed qua Respondent nos. 1 and 2 i.e. the claimants. But this appeal is admitted qua*

Respondent nos. 3, 4 and 5 by leaving open all contentions of all parties.

9. Mr. Gosavi, learned Counsel, waives notice on behalf of Respondent nos. 3 and 5.

10. Mr. Timble states steps would be taken within four weeks to effect service upon Respondent No.4.

11. The Insurance Company has deposited the awarded amount in this Court. Now that this appeal is dismissed against Respondent nos. 1 and 2 i.e. the claimants, the claimants are allowed to withdraw the deposited amount together with interest that shall be accrued on the same. For this, learned Counsel for the Respondent nos. 1 and 2 will have to furnish their identity and their bank details to the Registry so that the Registry can directly transfer this amount into their bank account. The Registry to do the needful at the earliest.”

4. After the 4th Respondent was served, this matter is now taken up for final hearing.

5. Ms Yadika Mandrekar, the learned Counsel for the Appellant, submitted that there is no evidence whatsoever to suggest that the driver Mr Pratik Kumar Singh (R-3) of the insured vehicle (Maruti 800 car bearing No.MH-06-T-8154) was, at the time of the accident, accompanied by his mother Mrs Shruti Singh who had a regular driving licence. She submitted that the Claimant's father, Muniyappa (A-1), admitted that he was not present at the time of the accident. She submitted that Niloba Sawant (AW4) - Investigating Officer, had reached the accident spot after the accident. Accordingly, based on their

evidence, the Tribunal could not have concluded that the driver was accompanied by his mother, who had a regular driving licence at the time of the accident.

6. Ms Yadika Mandrekar submitted that driving the insured vehicle by an unauthorised person, i.e., someone with only a learner's licence, exonerates the Insurance Company. She relied on *Pappu and Ors v/s. Vinod Kumar Lamba and Anr.*¹ and *Oriental Insurance Company Limited vs. Bhagwanti*², decided by the Chhattisgarh High Court, to support her contention.

7. Ms Mandrekar submitted that in both the decisions referred to above, the Courts accepted the Insurance Company's plea but made a "pay and recovery" order. Accordingly, she submits that even in this case, a "pay and recovery" order could be made now that the compensation amount has already been paid to the Claimants.

8. In this case, there is no dispute that Mr Pratik Kumar Singh (R-3) was driving the insured vehicle at the time of the accident. The only dispute is whether his mother, Mrs Shruti Singh (R-5), was accompanying him at the time of the accident. No dispute was raised about Shruti Singh (R-5) having a regular and valid driving licence.

9. In the accident, 27-year-old Deepak Muniyappa died. His parents raised the claim by pointing out that Deepak was a Ph.D scholar at BITS

¹ (2018) 3 SCC 208

² MAC No.1237 of 2018

Pilani on a monthly fellowship of ₹20,000/- which was increased to ₹25,000/- just before his unfortunate demise in the accident.

10. Muniyappa (AW1) deposed that Pratik Kumar Singh drove the offending vehicle at the time of the accident, and his mother, Shruti Singh, who was holding a valid driving licence, was travelling along with Pratik Kumar Singh. He deposed that since she was in charge of driving the offending vehicle, she was impleaded as Respondent in the Claim Petition based on the premise that she was jointly and severally liable along with the Insurance Company and Pratik Kumar Singh. However, he admitted in the cross-examination that he had not witnessed the accident.

11. Niloba Sawant (AW4) was the Investigating Officer who investigated the accident. In his chief, he deposed that at the relevant time, Mrs Shruti Singh, the mother of Mr Pratik Kumar Singh, was accompanying said Pratik Kumar Singh. He deposed that Shruti Singh had a valid licence and Pratik Kumar Singh had a learner's licence. He denied the suggestion that Shruti Singh was not accompanying Pratik Kumar at the time of the accident. He also deposed that he had recorded one of the eyewitnesses' statements about the accident. Surprisingly, on behalf of the Insurance Company, a suggestion was put to this I.O. that he had falsely charge-sheeted Pratik Kumar Singh since the accident had occurred due to the rash and negligent driving of deceased Deepak Kumar.

12. Damodarhan Nair (AW5), whose statement was recorded as an eyewitness by Niloba Sawant (AW4), was also examined in the Claim Petition. He clearly and unambiguously deposed that the offending Maruti vehicle was driven by Pratik Kumar Singh, and the driver was accompanied by his mother. He deposed that after Deepak, who was incidentally his cousin, was moved to hospital, he waited at the accident spot with the driver and his mother until the police came to the accident spot. He explained that no one else was willing to wait with the driver of the Maruti car and his mother.

13. In the cross-examination, apart from the general suggestion that Damodarhan Nair was a planted witness or that he had never seen the accident, there were no precise suggestions put to Damodarhan that the driver Pratik Kumar Singh was not accompanied by his mother at the time of the accident. Instead, the only question that was asked of Damodarhan was how he came to know that the person who was accompanying the driver of the Maruti car was his mother. This is quite different from denying the presence of any person accompanying the driver of the Maruti car.

14. Therefore, even if the evidence of Muniyappa (AW1) is completely excluded from consideration, upon the cumulative consideration and evaluation of the evidence of Niloba Sawant (AW4) and Damodarhan Nair (AW5), the Tribunal was justified in holding that the offending vehicle was driven by Pratik Kumar Singh who held a

learner's licence at the time of the accident, and, Pratik Kumar Singh was accompanied by his mother who had a regular and valid licence. The contention that finding to this effect is not supported by any evidence on record cannot be accepted, given the clear evidence of Damodarhan Nair (AW5) and corroborative evidence of the I.O. Niloba Sawant (AW4).

15. Once it is established that Pratik Kumar Singh had a learner's licence but was accompanied by his mother, Shruti Singh, who had a regular and valid licence at the time of the accident, it is difficult to hold that there was any breach of the terms of the insurance policy. The finding recorded by the Tribunal will then have to be sustained.

16. In *Pappu and Ors vs. Vinod Kumar Lamba* (supra), the issue was about the burden and onus of proof in the context of the defence that the person driving the vehicle did not have a valid licence. In the present case, there is no dispute that Pratik Kumar Singh had a learner's licence, and the evidence now establishes that his mother, Shruti Singh, who was accompanying him at the time of the accident, had a regular and valid licence. Therefore, based on the two decisions relied upon by Ms Yadika Mandrekar, no case is made out to interfere with the Tribunal's finding or to make any "pay and recovery" order.

17. The above-referred order made on 09.02.2024 is made absolute in so far as the claimants are concerned.

18. For the above reasons, this appeal is liable to be dismissed and is

hereby dismissed. There shall be no order for costs.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUZA

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FRANCISCO
DSOUZA
Date: 2024-05-09
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