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**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIM TRIBUNAL,
MALKAPUR, DISTRICT- BULDHANA**

Motor Accident Claim Petition No.169/2021

ORDER BELOW EXHIBIT – 83

MHBU110005682021 **Maheshkumar Visandas Tulsani & anr.**



... Applicants

Versus

Pradhyumanbhai Bipinbhai Boricha & othrs.

... Respondents

The insurance company has filed this application seeking to issue witness summons to respondent No.1 to produce details of permit or temporary permit if obtained to ply the offending vehicle in the state of Maharashtra on the date of accident i.e. on 21/02/2018.

2. The contents of the application would show that the accident is of 21/02/2018 in which vehicle owned by respondent No.1 bearing No.GJ-03-AT-2707 was involved. Initially summons was issued to R.T.O., Rajkot in respect of permit. The documents sent by the R.T.O. directly to the court revealed that on the date of accident, the offending vehicle was in the State of Maharashtra without valid permit. Respondent No.1 who is owner of the offending vehicle has not placed any record of permit to ply the offending vehicle in the State of Maharashtra. In the cross-examination of the witness examined on behalf of the insurance company, some questions regarding temporary permit are asked on behalf of the applicants. On this background, the insurance company seeks to call respondent No.1 as a witness to produce permit or temporary permit to ply the vehicle in the State of

Maharashtra which according to him is necessary to decide the liability.

3. From the side of the applicants, application is strongly opposed by way of reply at Exh.84. According to the applicants, this application is not maintainable at this stage. It is the burden upon the insurance company to prove defence by adducing cogent evidence. This application is filed with mala-fide intention to prolonge the matter. The insurance company can utilize its own machinery and through proper channel inquire availability of permit at the time of accident. Therefore, it is prayed that the application be rejected.

4. Heard for both the sides. Ld. advocate for the insurance company submitted that the evidence of the respondents is yet to be concluded. Evidence regarding permit is necessary to decide the question regarding breach of policy. The documents collected from the R.T.O. did not show that permit was available with respondent No.1 to ply the offending vehicle in the State of Maharashtra. He pointed out that while cross-examining witness of the insurance company at Exh.103, questions are asked regarding temporary permit. He submitted that respondent No.1 is the best witness who is having exclusive information as to permit to ply in the State of Maharashtra and therefore, he can be call upon to produce such permit.

5. Ld. advocate for the applicants, on the contrary, has argued that the breach of terms of insurance is to be prove by the insurance company by independent evidence. According to him, the

insurance company can get evidence from the concerned agency issuing permit. He further argued that mere calling upon the owner of the offending vehicle to produce permit is not sufficient to discharge the burden upon the shoulders of the insurance company to prove breach of policy.

6. He relied upon the decision of the Hon'ble Supreme Court in *Narcinva V. Kamat V/s. Alfredo Antonio Deo Martins AIR 1985 SC 1281* in which the insurance company was held to have failed to prove breach of the terms of the contract of insurance on the ground that the driver of the offending vehicles was not having valid driving licenses. It was held that the burden was on the insurance company to prove breach of policy. It was also held that the insurance company could have got evidence from the R.T.O.

7. Ld. advocate for the applicants further relied upon the decision of Hon'ble Bombay High Court in *Rajendra Raghunath Girme V/s. Pramila Dattu Surese (Kumari) & othrs. reported in 2002 (3) Bom. C.R. 305*. In that case, the insurance company was challenging the liability on the ground that driver of the tractor did not produce driving license. It was held that the insurer was under obligation to prove that driver had no driving license. It was also held that by mere calling upon the driver could not help the insurance to disown liability. In that case owner and driver did not enter in to the witness box. The Hon'ble High Court was of the opinion that the insurance company was to get answer from R.T.O. that the driver of the tractor was not holding valid licenses.

8. Ld. advocate for the applicants relied upon the decision of Hon'ble Madhya Pradesh High Court in ***Smt. Shamkumnwar & othrs. V/s. Kamalsingh & othrs. II (1999) ACC 220 (DB)***. In that case, on application of the insurance company the tribunal had directed the driver to produce license. The driver failed to produce license. It was held that in respect of non production of the license that the tribunal could not draw adverse inference against him that he had no valid licenses.

9. In the present matter, the evidence of the insurance company is yet to be closed. It is true that the insurance company cannot discharge the burden merely by calling the witness to produce permit or temporary permit. However, it is possible for the insurance company by calling the respondent No.1 to collect information whether there was permit or there was no permit at all. If the owner comes and tells that he was having permit and produces it, it would make the position clear as to the question regarding availability of permit. If the owner does not come or fails to produce the permit, it would not raise any adverse inference that there was no permit and the burden to prove breach of policy on account of non availability of permit will not get discharged. However, this situation is a matter of consideration at the time of final judgment.

10. At this stage, it is necessary to give an opportunity to the insurance company at least to lead evidence of the owner in respect of permit to ply the offending vehicle in the State of Maharashtra. That opportunity cannot be taken away from the

insurance company. Due to this reason, at this stage, it is necessary to issue summons of the owner of the offending vehicle to appear along with permit of the offending vehicle on the date of accident dated 21/01/2018 to ply the vehicle in state of Maharashtra if available with him. Accordingly I pass the following order.

ORDER

1. Issue summons to respondent No.1 to produce the permit of the offending vehicle bearing No.GJ-03-AT-2707 to ply the vehicle in the State of Maharashtra on 21/01/2018.
2. Insurance company to take necessary steps to issue the summons without making undue delay.

Date : 04/10/2023

(S. V. Jadhav)
Member, Motor Accident Claim
Tribunal, Malkapur.

CERTIFICATE

I affirm that the contents of this PD.F. file of order is same, word to word, as per the original order.

Name of the Stenographer	Balkrishna M. Shilwant.
Court	Adhoc District Judge-1 & Addl. Sessions Judge, Malkapur.
Date	04/10/2023
Order signed by the presiding officer on	04/10/2023
Order uploaded on	07/10/2023