



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 FIRST APPEAL NO. 2816 OF 2018

The Oriental Insurance Co. Ltd., Thr Its Manager, Nanded

VERSUS

Ataur Raheman Abdul Raheman and others

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Advocate for Appellant : Mr. Rameshwar F. Totala

Advocate for Respondent No.1 : Mr. Taher Ali Quadri a/w Mohd.
Rizwan h/f Mr. Zia-ul-Mustafa

Advocate for Respondent No.3 : Mr. R.C. Bora h/f Mr. A.R. Borulkar

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 27th JULY, 2026

PER COURT :-

1. This appeal has been preferred by the Insurance Company of the auto-rickshaw involved in the accident with a jeep, challenging the judgment and award dated 02.05.2017 passed by the learned Motor Accident Claims Tribunal, Nanded, in M.A.C.P. No. 184 of 2012.

2. The only disputed issue in this case is that the claimant was travelling in the auto-rickshaw and accident took place of head-on collision, in which he sustained 100% permanent disability.

3. Learned advocate for the appellant Insurance Company submitted that the policy of the auto rickshaw at Exh.37 does not

cover the risk of the passenger. It is 'act only' policy and therefore, the Insurance company cannot be held liable. At the most, owner of the auto rickshaw can be held liable. He pointed out the terms and conditions of the policy. He submitted that this aspect was not considered by the Tribunal and liability was fastened upon the Insurance company illegally. For that purpose, he is relying upon the following authorities:-

I) ***New India Assurance Company Ltd. vs. Meena Ashok Ghumre and others, (First appeal No. 38 of 2011, decided on 20.07.2017)***, in which it is held that an insurance policy is a contract between the insurer and the insured. The liability of the Insurance Company cannot be extended beyond the terms and conditions of the policy. If no additional premium has been paid to cover the risk of passengers travelling in the vehicle, the Insurance Company cannot be held liable to pay compensation in respect of such passengers.-

II) ***New India Assurance Company Ltd. vs. Kamal wd/o Gangaram Sapkal and others, first Appeal No. 3158 of 2018, decided on 27.08.2024***, in which it is held that where the offending vehicle is covered only by an "Act Only Policy" and no additional premium has been paid to cover the risk of passengers/occupants, the Insurance Company is not liable to indemnify the owner or pay compensation to such passengers. In such a case, the principle of "pay

and recover" is also not applicable merely because the claimants would otherwise be left without an effective remedy.

4. Learned advocate for the appellant further submitted that the issue is pending in the Hon'ble Supreme Court, as directed by the Hon'ble Supreme Court in S.L.P. (C) No. 10928 of 2020 dated 25.8.2022. The question of liability of third party in case of 'act only policy' was referred to the Larger Bench for decision. He therefore, submitted that the Insurance Company is not liable to pay the compensation. He prayed to allow the appeal and dismiss the claim against the Insurance company.

5. Leaned advocate for the respondent/claimant submitted that the policy Exh.37 does not show exclusion of any other persons like the passenger. He pointed out that 3+1 i.e. driver plus three passenger was the sitting capacity of the auto rickshaw involved in the accident. He submitted that for future medical treatment, no any amount is awarded to the claimant. He therefore, prayed to dismiss the appeal as the defence was not raised in the written statement that the third party passenger is not liable to pay the compensation. He is relying upon the following authorities:-

1) ***Ramla vs. National Insurance Company Limited, AIR 2019***

SC 404, in which it is held that The Motor Vehicles Act is a beneficial and welfare legislation. The duty of the Court is to award "just compensation" under Section 168 of the Motor Vehicles Act, irrespective of the amount claimed by the claimants. There is no restriction that compensation cannot exceed the amount claimed in the claim petition, if the evidence on record justifies a higher award.

II) ***Nagappa vs. Gurudayal Singh and others, AIR 2003 SC 674***, in which it is held that Section 168 empowers the Claims Tribunal to make an award determining the amount of compensation which appears to it to be just. Therefore, the only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation.

III) ***Khenyei vs. New India Assurance Company Limited and others, (2015) 9 SCC 273***, in which it is held that in a case of composite negligence, the claimant is entitled to recover the entire amount of compensation from any one or all of the joint tortfeasors, as their liability is joint and several. Apportionment of compensation between the joint tortfeasors, so far as the claimant is concerned, is impermissible.

6. For deciding the issue, Exh. 37, the copy of the insurance policy of the offending auto-rickshaw, is required to be considered. A

perusal of the liability clause in the policy shows that the basic third-party (T.P.) premium is Rs.740. The policy further indicates that an additional premium has been paid towards the liability of the driver, conductor and cleaner under IMT. It is an admitted fact that the offending vehicle is an auto-rickshaw used for carrying passengers. Therefore, the inclusion of the conductor and cleaner under the said policy does not appear to be consistent with the purpose for which the auto-rickshaw is used. The seating capacity clause in Exh. 37 shows that the auto-rickshaw has a seating capacity of 1+3 passengers. In such circumstances, it is not explained how the liability clause in the policy provides coverage for a conductor and cleaner. The Insurance Company has not examined any of its officers to explain or prove the said terms and conditions of the policy. This is sufficient to draw an inference that the policy was not properly issued by the Insurance Company. On the contrary, the Insurance Company has attempted to avoid its liability by contending that Exh. 37 is merely an "Act Only" policy. However, the policy does not specifically clarify that it covers only the driver of the auto-rickshaw and excludes all other occupants. Liability Clause No. 3, therefore, appears to be ambiguous and misleading. In fact, there was no necessity to provide coverage for a conductor and cleaner in the case of an auto-rickshaw, as such categories of employees are not ordinarily required for that class of vehicle. Therefore, having regard

to the facts and circumstances of the case, it cannot be accepted that Exh. 37 is merely an "Act Only" policy. Moreover, the Insurance Company did not raise defence in its written statement that a passenger such as the claimant was not covered under the said policy, which is raised in this appeal. Such course of taking defence of fact for the first time in the appeal is not permissible in law.

7. The Insurance company is rightly held liable by the learned Tribunal to pay the compensation jointly and severally in terms of the insurance policy Exh.37. It must be noted that while issuing the policy, there is tripartite agreement. Two parties are available for that agreement and the third party is not present, to whom the compensation is paid. The Insurance Company has issued such policy in deception by mentioning that the paid driver, conductor and cleaner are covered for which the premium of Rs.250/- has been charged. The Insurance company therefore, cannot take disadvantage of the same. The appeal being devoid of merits and deserves to be dismissed. For the above reasons, the laws laid in the aforesaid cases are not helpful to the appellants and therefore it is not relied upon.

8. As far as the award of compensation to the claimant under the head of future medical expenses is concerned, the claimant has not adduced any evidence to establish that he requires any specific

future medical treatment or the approximate expenditure likely to be incurred for such treatment through an expert or the treating doctor. Therefore, the claimant is not entitled to compensation under the head of future medical expenses. Consequently, the appeal deserves to be dismissed. The appeal is accordingly dismissed.

9. The amount deposited in this court be paid to the claimant with accrued interest thereon.

(SANJAY A. DESHMUKH, J.)

10. At this stage, the learned advocate for the appellant–Insurance Company submits that the operation, implementation and execution of this order may be stayed for a period of eight (08) weeks from today. The learned advocate for the respondents strongly opposes the said prayer.

11. Considering the peculiar facts and circumstances of the case, it would be appropriate to grant a stay for a period of four weeks. Accordingly, the operation, implementation and execution of this order shall remain stayed for a period of four weeks from today.

(SANJAY A. DESHMUKH, J.)