IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5 OF 2005
WITH
CIVIL APPLICATION NO. 1743 OF 2005

New India Assurance Co. Ltd. .. Appellant
Through its Authorized Signatory
Srikant Baliram Aney, Age. 50 years,
Occ. Sr.Div.Manager, R/o. Aurangabad.

Versus

1. Khamrunnisa Begum w/o. Abdul Hafiz .. Respondents
   Age. 45 years, Occ. Business,
   R/o. Karim Colony, Roshan Gate,
   Aurangabad.

2. M.A. Osman s/o. M.A. Sattar
   Age. 40 years, Occ. Business,
   R/o. Phulong Street, Nizamabad,
   Nizamabad.

3. Mohd. Ghouse s/o. Mohd. Abdul Rehman
   Age. 38 years, Occ. Driver,
   R/o. Kamtipuram, Nizamabad,
   Nizamabad.

Mr. Dhananjay Deshpande, Advocate for appellant.
Mr. R.R. Imale, Advocate for respondent No.1.

CORAM : A.M. BADAR,J.
DATED : 30.11.2015

ORAL JUDGMENT :-

1. This is an appeal by insurer of truck bearing registration No. AP-13-T-6942/original respondent No.3, who allegedly dashed and damaged the truck of original claimant.

2. Brief facts necessary for deciding appeal are thus :-

. Claimant-Khamrunnisa/respondent No.1 herein lodged claim under section 166 of the Motor Vehicles Act, claiming compensation of Rs.2.50 lakhs on account of third party damages. She is owner of another truck bearing registration no. MH-21-5051. It is her case that said truck bearing registration No.AP-13-T-6942 is owned by respondent No.2 herein (original respondent No.1) and at the relevant time it was driven by respondent No.3 herein (original respondent No.2). For the sake convenience, parties shall be referred to in their original capacity. According to claimant, at the time of the accident, truck (MH-21-5051) owned by her was driven by Shaikh Hamid Shaikh Chand (since deceased) from Aurangabad to Nanded. On 14.08.1999 on Jintur Aundha road in Rameshwar Shivar, offending truck bearing registration No. AP-13-T-6942 came from opposite direction in rash and negligent manner and gave dash to truck owned by claimant. Because of forceful dash, the truck owned by claimant was severely damaged and its driver died on the spot. According to the claimant, she was required to repair her truck by keeping it idle for a period of three months. As such, on various grounds claimant prayed for awarding compensation of Rs.2.50 lakhs from the respondents therein.

3. Despite service, original respondent Nos.1 & 2 failed to appear and contest the claim. Respondent No.2 insurance company/present appellant contested the claim by denying each and every adverse averments. It denied mode and manner of happening of the accident as well as damages claimed. Respondent No.2/insurance company

contended that at the time of the accident, driver of the truck i.e. respondent No.2 was not holding any valid and effective licence. It further contended that accident happened because of negligence on the part of driver of the truck owned by the claimant.

4. In its written statement at Exh.24, respondent No.3 insurance company came up with a particular stand that truck bearing registration No. AP-13-T-6942 was insured by “act only policy” without covering any additional risk. It will be apposite to reproduce para No.1 as well as para 12 of written statement at Exh.24. Those read thus :-

> “1. At the outset this respondent submits that the vehicle bearing No. AP 13 T 6942 allegedly involved in the said accident is insured with this respondent under policy No. 3161060028613 for a period commencing from 16.01.1999 to 15.01.2000. However, the policy is Act Policy only, without covering any additional risks. In view of this position and the present claim being third party property damages claim, the liability of the present respondent at the most comes to Rs.6000/- only. In addition to that in the present claim, the papers clearly indicate

> that this is a case of contributory negligence. Hence this respondent is neither jointly nor severally liable to pay any compensation or damages to the claimant. Copy of the policy is annexed herewith.
>
> 12. As stated at the outset, the policy of the vehicle being Act Policy and the claim being Third Party Property Damages claim, the liability of the present respondent at the most comes to Rs.6000/- only. Apart from this, present claim petition and its papers clearly make out a case of contributory negligence and hence this respondent cannot be held liable to pay any compensation to the claimant."

5. It is thus clear that respondent No.3-insurance company made its stand clear and put the claimant to the notice that its liability to indemnify to insured was limited to the extent of Rs.6000/- only as per provisions of section 147 of the Motor Vehicles Act, 1988.

6. On the basis of rival pleadings, parties went for trial. In support of her claim, claimant examined herself at Exh.33 and also adduced evidence of Sd. Munir Sd. Amin, Mechanic who repaired the damaged truck of the claimant and Rasool Khan Sher Khan, truck body builder who repaired body of the truck. After hearing the

parties, by impugned judgment and award learned Tribunal came to the conclusion that the claimant proved that driver of the truck bearing registration No. AP-13-T-6942 drove it in rash and negligent manner, thereby causing damage to the truck bearing Registration No.MH-21-5051 owned by claimant. The learned Tribunal quantified the damages at Rs.1,69,520/- and directed all respondents including the present appellant/insurer to pay the same to the claimant along with interest at the rate of 6% p.a. from the date of petition.

7. Heard Mr.Deshpande, the learned Counsel appearing for the appellant. By drawing my attention to Section 147 which deals with requirement of policy and limit of liability of the insurer, he submitted that the cover note as well as schedule to insurance policy placed on record by the parties do show that the offending truck was insured with “act only policy” and as such liability of the insurer was limited to the extent of Rs.6000/-. Hence, impugned award fastening entire liability on the

appellant/insurance company is vitiated by error of law.

8. As against this, the learned Counsel appearing for respondent No.1 herein/original claimant by drawing my attention to the certificate/policy of insurance of damaged vehicle i.e. MH-21-5051 owned by the claimant contended that it cannot be said that the liability of the appellant/insurance company is limited to Rs.6000/-. In his submission as damaged truck was insured with third party cover for unlimited amount as seen from the certificate at Exh.40, it needs to be construed in absence of contrary evidence that the offending truck was also insured with unlimited liability regarding the property damaged. He further argued that issue regarding limited liability of insurer of offending vehicle was not framed in order to accord opportunity to rebut the same by the claimant. He further argued that the claimant was not cross-examined on this aspect by the insurance company and as such at the most, matter can be remanded to the tribunal for deciding afresh. In order to

substantiate this contention, the learned Counsel relied on judgment in case of **Fahim Ahmad & Ors. Vs. United India Insurance Co. Ltd. & Ors. (2014) 14 Supreme Court Cases 148**. In support of his contention that insurance company failed to prove its limited liability by adducing necessary evidence, he placed reliance on the judgment of Delhi High Court in **New India Assurance Co. Ltd. Vs. Geeta & Ors., 2013(2) ALL MR (JOURNAL)1** and **National Insurance Co. Ltd. Vs. K.R.Murgeshan & ors., 2013 (2) ALL MR (JOURNAL)21**.

9. With the assistance of the learned Counsel appearing for parties, I have carefully perused the record and proceeding. Though it was not argued and pointed out by the learned Counsel appearing for the respondent/claimant, it is seen from the record that the claimant has filed to cross-objection and contended that the learned Tribunal erred in not awarding compensation of Rs.1 lakh on account of idle charges of the truck during the course of its repair work. It is seen from the

cross-objection that the claimant is praying for awarding additional compensation of Rs.50,000/- on account of additional charges of damaged truck for a period of three months under the head loss of earning.

10. Now let us examine issue as to whether it can be said that liability of respondent No.3 insurance company towards third party was limited to the extent of Rs.6000/-. We need not transverse to other facts as finding of the learned Tribunal regarding rashness and negligence of the offending truck in causing accident is not at all challenged by the appellant insurance company.

11. At the outset let us reproduce provisions of Section 147 of the Motor Vehicles Act, 1988, which lays down requirement of policies and limit of liability in respect of passengers and persons other than passengers in relation to passenger vehicle and goods carriage as well as that in respect of damage to the property owned by third person. It reads thus :-

147 **Requirements of policies and limits of liability. —**

(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which—

(a) is issued by a person who is an authorised insurer; and

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)—

(i) against any liability which may be incurred by him in respect of the death of or bodily [27] [injury to any person, including owner of the goods or his authorised representative carried in the vehicle] or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:

Provided that a policy shall not be required—

(i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923) in respect of the death of, or bodily injury to, any such employee—

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:—

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law

> for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons.

12. Bare perusal of provisions of this section makes it clear that owner of the motor vehicle is compulsorily required to ensure his vehicle in order to cover liability mentioned in this section. Damage to any property of third party is required to be ensured at the limit of Rs.6000/- statutorily.

13. In the case in hand, claimant Khamrunnisa herself has placed on record cover note in respect of insurance policy of truck bearing registration No. AP-13-T-6942, which has caused accident in question. This cover note shows that an amount of Rs. 2779/- was recovered from the owner of said truck towards “act premium” and an amount of Rs.30/- was recovered towards liability in respect of driver and cleaner of that truck. No particular premium was recovered towards coverage of

unlimited liability in respect of damage to any property of a third party. Similar is the schedule to the policy placed on record at Exh.47 by appellant-insurer before the learned Tribunal. This schedule to the policy also shows that risk covering unlimited liability of damage to the property of a third party was not undertaken by the insurance company by recovering additional premium from the owner of the offending truck. As against this, if insurance policy of the damaged truck at Exh.40 is perused then it is seen that additional premium of Rs.75/- was recovered from the owner/claimant herein for covering unlimited risk of a third party. At this juncture it is apposite to note that sub-section (5) of Section 147 provides that insurer issuing policy of insurance under that section shall be liable to indemnify person or classes of person specified in the policy in respect of any liability which the policy proposed to cover in the case of that person or those classes of that person. This implies that while insuring vehicle for act policy, insurer can receive additional premium from the insured for covering additional risk. It appears that, therefore, additional premium paid by the claimant for covering additional risk of the truck of the claimant vide Exh.40 was received. That does not *ipso facto* mean that pure act only policy will cover unlimited policy of damage to a third party when statute itself limits its liability to Rs.6000/-. Documentary evidence on record does not show that any additional premium was recovered from the owner of the offending truck to cover unlimited risk of third party damage by the said truck.

14. It is well settled that proceedings under section 166 of the Motor Vehicles Act are summary in nature and those are not governed by strict rule of evidence and pleadings and as such non-framing of issue to the effect that whether liability of the insurer was limited to Rs.6000/- or not is of no consequence. Claimant as well as other respondents were put to notice of this limited liability by categorical averments made in the written statement by the appellant-insurance

company. The observations of the Hon'ble Supreme Court in para 6 of its judgment in the matter of **Fahim Ahmad (Supra)** proceeded on the fact of that case. In that matter, no evidence was adduced to prove limited liability of the insurance company therein. However, in the instant case, documentary evidence tendered by the claimant at Exh.39 shows that liability of respondent No.3-insurance company was limited to the liability covered by the Motor Vehicles Act, 1988. It is well settled that party tendering documentary evidence cannot recile from the same as that would amount of approbating and reprobating at the same breath. That apart, documentary evidence in the form of Schedule of Exh.47 is clear to the effect that liability of the appellant insurer is limited to only Rs.6000/- towards third party damage. As such, it cannot be said that there is no evidence on record to come to the conclusion that liability of the appellant insurance company is limited to Rs.6000/-. Therefore, finding of the learned Tribunal to the effect that respondent No.3 has failed to show limit of its liability to pay compensation is totally perverse. Admissible evidence was ignored by the learned Tribunal in arriving this finding.

15. So far as cross-objection in respect of idle charges of the truck is concerned, there is no justifiable evidence on record to come to the conclusion that claimant is entitled for Rs.50,000/- on this count. Hence, the same is liable to be rejected.

16. In the result, the appeal deserves to be allowed with following order :-

i. Appeal is allowed.

ii. The cross-objection of respondent No.1 is dismissed.

iii. Impugned judgment and award of the learned Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P. No.195 of 2000 between the parties dated 29.09.2004 is modified to the extent that liability of respondent No.3-insurance company (present appellant) to satisfy award is limited to the extent of Rs.6000/-.

iv. Rest of impugned judgment and award of the learned Motor Accident Claims Tribunal, Aurangabad is confirmed.

v. Parties to bear their own costs.

vi. In view of disposal of First Appeal, connected Civil Application for stay does not survive and stands disposed of.

[A.M. BADAR,J.]