

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 216 OF 2000

M/s United India Insurance Co. Ltd.,
having its Registered and Head Office
at 24, White Street, Chennai and
Divisional Office at V.P. Chowk,
Osmanpura, Aurangabad through its
Senior Divisional Manager and
Constituted Attorney Mr. Bhimsing
Julalsing Somawansi

APPELLANT

VERSUS

1. Neeta w/o Surendra Sawaji,
Age : 31 years, Occu. Household
2. Mrinal d/o Surendra Sawaji,
Age : 9 years, Occu. Education
3. Neesha d/o Surendra Sawaji,
Age : 6 years, Occu. Education
4. Sanket s/o Surendra Sawaji,
Age : 3 years, Occu. Nil
5. Gulab Asarama Sawaji,
Age : 56 years, Occu. Household
6. Bijabai w/o Gulab Sawaji,
Age : 48 years, Occu. Household

All r/o Sanmati Bungalow,
Behind S.B. High School,
Jalna

7. Mahindra Gulab Sawaji,
Age : 25 years, Occu. Business
and Agriculture, R/o Kasba,
Old Jalna, Jalna.

RESPONDENTS

Mr. V.N. Upadhye, Advocate for the appellant
None for the respondents though served

CORAM : M.T. JOSHI, J.

DATE : 14/01/2015

ORAL JUDGEMENT :

1. Heard learned counsel for the appellant.
None appeared for the respondents, though duly
served.

2. The only issue before this Court is as to
whether the present appellant – the insurer of the
two-wheeler i.e. M-80 vehicle, by which the
deceased was travelling, while the accident had
occurred due to rash and negligent driving of some
unknown vehicle, would be liable to pay the

compensation or indemnify the owner of the said vehicle in payment of compensation.

3. The case of the respondents before the learned Member of the Motor Accident Claims Tribunal was that since the present appellant has issued a comprehensive policy, the appellant would be liable to pay compensation. The learned Member concurred with the same and accordingly, the present appellant was directed to pay compensation of Rs. 5,06,000/- to the legal representatives of the deceased, including the respondents No. 1 to 6. Hence, the present appeal.

4. Mr. V.N. Upadhye, learned counsel for the appellant, submits that the established principle of law is that the tort is required to be pleaded and proved to claim compensation even in a motor vehicle accident, then only it would be vicariously liable for payment of compensation. In view of the

contract of insurance, the insurer would be liable to indemnify the owner of the vehicle.

5. On the basis of above submissions, the following points arise for my determination :-

(I) Whether the present appellant was liable to indemnify the respondent No. 7 i.e. the owner of the two-wheeler M-80 in payment of compensation ?

(II) What order ?

My finding to the above point No. (I) is in the negative. The appeal is, therefore, allowed without any order as to costs, for the reasons to follow :-

R E A S O N S

6. The reading of the judgement of the learned Member, Motor Accident Claims Tribunal would show that the learned Member has relied over the ratio of the case which was in relation to the grant of amount towards no fault liability as per the then provisions of Section 92-A of the Motor Vehicles Act. Naturally while dealing with the case finally as per the provisions of section 110 of the Motor Vehicles Act, the ratio would not be relied.

7. The next of the reasoning of the learned Member was that the policy of insurance was a comprehensive policy and therefore, the present appellant/insurer would be liable to pay compensation. The term 'comprehensive policy' would not mean that in any case the insurer would be liable to indemnify the owner of the vehicle.

8. Mr. Upadhye, learned counsel for the appellant relied on the ratio laid down in case of ***Oriental Insurance Co. Ltd. Vs. Aruna and others, 2008 ACJ 2356*** and submitted that the amount paid by the appellant – Insurance Company towards the no fault liability may be directed to be recovered from the owner of the vehicle.

9. In support of the preposition that the proof of negligence is necessary, Mr. Upadhye relied upon the ratio laid down in the case of ***Minu B. Mehta and anr. Vs. Balkrishna Ramchandra Nayan and anr., AIR 1977 SC 1248.***

10. In view of above discussion, the appeal deserves to be allowed. Hence, the following order:-

a] The appeal is hereby allowed without any order as to costs.

b] The direction of the learned Member of the Motor Accident Claims Tribunal as against the present appellant i.e. the original respondent No. 2 to pay the compensation, is hereby set aside.

c] The appellant would be entitled to recover an amount of Rs.50,000/- paid by it towards no fault liability from present respondent no.7 – Mahendra Gulab Sawaji.

d] The statutory deposit made in this Court be refunded to the appellant after a period of sixty days from the date of this order.

e] The present first appeal accordingly stands disposed of.

[M.T. JOSHI]
JUDGE

npj/fa216-2000