IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

4 FIRST APPEAL NO. 494 OF 2013

SHALINI MAHENDRA KHANDARE AND ORS
VERSUS
JIVAN MAHADEV GAWAI AND ANR

...

Advocate for Appellants : Mr. Agrawal Pavankumar S.
Advocate for Respondents : Mr.Shirsat Suhas R.
Advocate for respondent No.2: Mr. V. N. Upadhye

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The present appellant had filed an application for compensation under section 163 of the Motor Vehicles Act. The tribunal has partly allowed the application. Insurance company is exonerated. Aggrieved thereby, the claimant has filed the present appeal.

2. Mr. Agrawal, the learned counsel submits that the policy in question is a package policy. In view of the notification issued by the Insurance Regulatory and Development Authority, dated 16th November, 2009, the insurance company would be liable to compensate even pillion rider carried on two wheeler. The deceased was pillion rider is an accepted fact. As such, the insurance company ought not have been exonerated.

3. Mr. Shirsat, the learned counsel for the respondent- owner of the vehicle submits that the policy in question was a package policy.

4. Mr. Upadhye, the learned counsel for the respondent no.2, upon perusing the policy, affirms that the policy is a package policy, however submits that the insurance company has been rightly exonerated as no additional premium was paid for passenger or pillion rider. The tribunal has rightly appreciated the said fact and exonerated the insurance company.

5. With the assistance of learned counsel, I have considered the judgment so also record and proceedings. It is not disputed that the policy in question is a package policy. The present appeal is limited only to the extent of assailing the judgment of the tribunal exonerating the insurance company. When the policy in question is a package policy, then the notification dated 16th November, 2009 issued by Insurance Regulatory and Development Authority and accepted by all the insurance companies would certainly apply which covers even a pillion rider carried on two wheeler. In the light of that, the insurance company cannot be exonerated.

6. Mr. Upadhye, learned counsel submits that the driver of the vehicle was not holding valid licence. The said licence is not produced on record nor it is produced before this Court. It would be a case of breach of policy and the insurance company is required to be exonerated.

7. In the present matter also, I had asked the parties, if the driver of the vehicle i.e. deceased Samadhan had any licence or is it produced before the tribunal or this Court to which the learned counsel replies that the same is not produced. In such case, the order of pay and recover can be passed as is held by the Apex Court in the case of **S. Iyappan Vs. United India Insurance Company, reported in 2013 AIR (SC)2262.** In the result, the order passed by the tribunal is modified.

8. The First Appeal No. 494 of 2013 is partly allowed.

9. It is held that the respondents No.1 is liable to pay compensation of Rs.4,75,800/- in the proportion as awarded by the tribunal to the claimants. The present respondent no.2 insurance company shall pay an amount of Rs.4,75,800/- to the claimants with interest @ 6% per

annum from the date of award passed by the tribunal till realization of the amount and then recover it from respondent no.1.

10. First appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC