IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 602 OF 2001

The New India Assurance Co. Ltd.
Head Office New India Assurance
Building, 87, M.G. Road, Fort,
Bombay 400001 the Branch Office
at Dr. Babasaheb Ambedkar Market,
Zila Peth, Jalgaon, District Jalgaon,
Divisional Office at Adalat Road
Aurangaba through its Divisional
Manager and Constituted Attorney
Mr. Namdeo Gangaram Mali,
Age: 52 years. ...Appellant

versus

1. Daulat s/o Govinda Mahajan,
Age: 66 years, Occ: Labourer,
R/o. Jalgaon.
(abated as per Registrar's order
dated 24/06/2008)

2. Lakshimibai w/o Daulat Mahajan,
Age: 60 years, Occ: Labourer,

3. Varshabai w/o Gokul Mahajan,
Age: 22 years, Occ: Labourer,

4. Chhaya d/o Gokul Mahajan,
Age: 7 years, Occ: Education,
Minor u/g her natural Mother No. 3

All R/o. Erandol, Tq. Erandol,
Dist. Jalgaon.

5. Raju s/o Bhatu Choudhary,
Age: 32 years, Occ: Business,
Erandol, Tq. Erandol, Dist. Jalgaon. ...Respondents

.....

Mr. V.N. Upadhye, Advocate for appellant
Mr. R.B. Dhaware, Advocate h/f Mr. U.S. Malte, Advocate for respondent Nos. 2 and 3

.....

CORAM : N.W. SAMBRE, J.

DATE : 30th JULY, 2015

ORAL JUDGMENT :

This is appeal is by the Insurance Company under Section 30 of the Workmen's Compensation Act, 1923 (hereinafter shall be referred to 'the Act').

2. The respondents-claimants preferred Application (W.C.A.) No. 52 of 1998 before the Judge, Labour Court, Jalgaon, claiming compensation on the ground that the husband of claimant No. 3 was employed as driver at Rs. 2000/- per month on Matador bearing Registration No. MH-18-9953 which was owned by original opponent No.1 Raju Chaudhary.

3. The said matador while carrying about 40 passengers met with an accident on 05/04/1998 having given dash to the goods truck bearing Registration No. MWD-3801 resulting into death of matador driver namely Gokul.

4. As according to the claimants, the death has occurred

during course of employment of Gokul with non applicant No.1 and the vehicle in question was insured with present appellant - non applicant No.2 for the period of 30/03/1997 to 29/03/1998, they sought compensation of Rs. 2,16,910/-.

5. Initially, the Commissioner has awarded Rs.50,000/- under No Fault Liability and then proceeded to decide the claim on merits. The Commissioner has allowed the claim petition to the extent of Rs.1,55,950/- after deducting Rs.50,000/- towards No Fault Liability. As such, present appeal.

6. Mr. Upadhye, learned Counsel for the appellant Insurance Company has sought to canvass that happening of the accident in question and insurance of the vehicle matador with the appellant is not in dispute. According to him, the vehicle was insured as goods vehicle and was not meant for carrying any passengers. He would urge that in view of breach of policy conditions, the appellant Insurance Company ought not to have been held responsible for the payment of compensation.

7. Based on the above submissions, in my opinion, following question of law needs to be considered.

> “ Whether original non applicant No. 2 present appellant Insurance Company is liable to pay the compensation in case if the breach of policy conditions as alleged?”

8. So as to decide the above referred issue, it is required to be noted that the insurance company has opposed the claim by filing written statement at Exhibit C-7 and has come out with specific plea that the vehicle in question was carrying 40 passengers and was driven by deceased Gokul, who was not holding driving licence. The defence is also raised that the insurance company is not liable to pay compensation in view of the breach of the policy conditions.

9. According to learned Counsel for the appellant that no evidence was adduced on behalf of the appellant original non applicant No. 2, however, admission given by the claimant No. 3 in her evidence that her husband who was driving vehicle was holding licence, who has lost his life in the accident and that goods vehicle was used for carrying passengers, takes this Court to only conclusion that goods vehicle was used for carrying passengers and there was breach of policy conditions. The above referred submissions are sought to be supported from the judgment of the Apex Court in the matter of ***Oriental Insurance Company vs. Premlata Shukla and others*** reported in ***2007(13) SCC 476***, particularly paragraphs-13

and 14 so as to canvass that once there is admission about carrying of passengers in goods vehicle, the burden cannot be shifted on the appellant to prove breach of policy. He would further urge that admission given by the claimant herself is required to be read in the interest of both the parties, as whole and it cannot be said that for the purpose of deciding the issue of breach of conditions, the statement of claimant to the extent of carrying passengers cannot be taken into account. According to him, the appeal is liable to be allowed. In addition to above, learned Counsel for the appellant has also relied upon unreported judgment of Madras High Court in the matter of M/s. National Insurance Company Limited Salem-1 vs. Arjuna & ors, delivered on 07/06/2011 in CMA No.2608 of 2004 in CMP No.15436 of 2004 so as to canvass that in case of breach of policy conditions, the insurance company is not liable to pay the compensation.

10. Learned Counsel for the claimants supported the award delivered by the Commissioner, as according to him, the entitlement was properly adjudicated and the claim petition was allowed. He prays for dismissal of the appeal.

11. With an intention to evaluate the above referred submissions, it is required to be noted that the insurance company in case if comes with the plea of breach of conditions of the policy, for

establishing breach of conditions of the policy, it is incumbent on the part of the insurance company to bring on record cogent evidence to prove the breach of terms of the policy.

12. The burden to establish the breach if alleged by the appellant in law is on Insurance Company in view of presumption in favour of claimants about insurance of the vehicle. Though such presumption is rebuttable, the appellant has not brought on record any independent evidence rather tried to take shelter of the evidence of the claimant.

13. In the present case, though from the evidence of claimant No. 3, it has come on record that the vehicle in question was goods vehicle, passengers were carried in the said vehicle, it cannot be inferred from the same that the vehicle in question was insured as goods vehicle and there was no appropriate permission for carrying passengers at the relevant time.

The claimant nowhere stated or admitted about breach of policy conditions.

14. It was duty of the present appellant to bring on record the fact as regards the insurance of the vehicle as goods vehicle and

vehicle cannot be used for carrying passengers. Once the appellant has failed to bring on record such evidence to establish the breach of policy conditions to which the appellant was duty bound in law, in my opinion, the Commissioner was right in drawing conclusion that the appellant herein was responsible for making payment of compensation. No witness was examined by the appellant to that effect.

15. So far as admission given by the original claimant No.3 in her evidence about existence of goods vehicle and carrying of passengers therein is concerned, from the said statement it cannot be inferred that the claimants were not entitled for the compensation from the insurance company unless the insurance company discharge its burden. No doubt, the judgment pressed into service by the learned Counsel for the insurance company speaks of consideration of evidence which is relied upon either by the parties for deciding the issue in the interest of both the parties, however the said statement as regards carrying of passengers in goods vehicle is concerned, the said cannot be read to the detriment of the claimant so as to infer that there was breach of policy conditions unless the appellant herein has discharged the burden of proving the same.

16. As such, support from the judgment of Oriental

Insurance Company (supra) will be of hardly any assistance to the appellant.

Once it is held that breach of policy condition was not proved by the insurance company, the judgment as is relied upon by learned Counsel for appellant from Madras High Court will be also of hardly any assistance to the appellant.

17. In my opinion, learned Commissioner has rightly evaluated the submissions and has observed that the insurance company has not discharged its burden to demonstrate the violation of policy conditions.

18. As such, the present appeal is devoid of merit, same fails, stands dismissed.

Sd/-
[**N.W. SAMBRE, J.]**

Tupe/30.07.15