

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 356 OF 2001

The Oriental Insurance Company Ltd.,
Branch Jalna, through its
Divisional Manager,
Divisional Office,
'Inder Prakash',
Adalat Road, Aurangabad

.. Appellant
(Orig. Resp.No.3)

VERSUS

1] Chandrabhagabai W/o Bhaurao Walke,
Age 57 years, Occu.: Household,
R/o Najikpangri, Tq. Badnapur,
Dist. Jalna

2] Babasaheb S/o Bhaurao Walke,
Age 32 years, Occu.: Labour,
R/o as above

(Ori. Claimants)

3] Ramnath S/o Rakhmaji Kale,
Age 35 years, Occu.: Agril.,
R/o as above

4] Baburao @ Yeshwantrao Rakhmaji
Kale, Age 40 years, Occu.: Agri.,
R/o as above

.. Respondents
(Orig. Resp.No.1 and 2)

Mr. S.M. Godsay, Advocate for the appellant
None present for the respondents though served.

CORAM : M.T. JOSHI, J.

DATE : 16/02/2015

ORAL JUDGMENT :

1. Heard Mr. Godsay.

2. None appears for the respondents since inception, though duly served upon admission of the appeal.

3. Upon hearing Mr. Godsay, in the present appeal arising out of the award passed by the learned Member of the Motor Accident Claims Tribunal, Jalna, following three points arise for my determination:-

I) Whether the policy of insurance covers the risk of pillion rider ?

II) Whether there was breach of the terms and conditions of the policy of insurance in absence of driving license of the motorcycle driver i.e. original respondent no.2 ?

III) Whether the motorcycle driver was rash and negligent in driving the same ?

4. In my view, since the policy of insurance did not cover the risk of pillion rider of the motorcycle, the presence or absence of the driving license or the issue of negligence would not be that much significant, as ultimately, the appeal would be required to be

allowed on point no.(I) for the reasons to follow.

R E A S O N S

5. The arguments, the record as well as the evidence would show that in the night of 31/3/1999, a dash occurred between the motorcycle bearing no. MVG-1185 and an unknown trax or jeep near village Najikpangri in Jalna district. In the accident, Bhaurao Patilba Walke has died. He was the pillion rider of the motorcycle. Therefore, his widow and the son filed the petition seeking compensation against the owner of the motorcycle i.e. the original respondent no.1-Ramnath, motorcycle driver i.e. original respondent no.2-Baburao and the insurer - original respondent no. 3 i.e. the present appellant.

6. Present appellant came with a case that in-fact, the jeep driver was rash and negligent, that the motorcycle driver was not holding any license and that in any case the policy of insurance did not cover the risk of pillion rider.

7. The motorcycle driver i.e. original respondent no.2 in cross-examination admitted that he did not hold any driving license to drive the motorcycle. Besides this, the record would show that the Police after making investigation in the case has filed the chargesheet against the unknown driver of the unknown jeep. Besides this, copy of policy of insurance at Exhibit 36 would show that it was only a statutory policy and as such for all the reasons, the learned Judge ought not to have directed the present appellant to indemnify the owner of the motorcycle in payment of compensation.

8. In the result, the following order:-

I) The appeal is hereby allowed without any order as to costs.

II) The award of the learned Tribunal to the extent of directing the present appellant to pay the compensation by indemnifying the original respondent no.1 is hereby set aside. The original petition stands dismissed as against the present appellant.

9. Mr. Godsay submits that some of the amount deposited in this Court is withdrawn by the claimants i.e. present respondent nos. 1 and 2.

10. In the circumstances, the appellant would be at liberty to recover the said amount by filing execution proceedings against the respondent no.3-Ramnath S/o Rakhmaji Kale, the owner of the motorcycle.

11. First Appeal stands disposed of accordingly.

[M.T. JOSHI]
JUDGE

arp/