

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 05 OF 2000
WITH
CIVIL APPLICATION NO. 118 OF 2000**

Oriental Insurance Company Ltd.,
Jalna, through Divisional Office,
Adalat Road, Aurangabad,
Through it's Divisional Manager,
'Inderprakash' Adalat Road,
Aurangabad, Dist. Aurangabad.

...Appellant

versus

1. Mumtaj Begum d/o Banduji Shaikh
@ Saidya w/o Arif Shaikh,
Age: 30 years, Occ: Govt. service,
R/o. Chinchkhed, Tq. Ambad,
Dist. Jalna.
2. Joharsing s/o Maniksingh Pardeshi,
Age: 43 years, Occ: Business,
R/o. Pandharpur, Tq. & Dist. Aurangabad.
(dismissed vide Court's order dt.2/12/03)
3. Chandrakant s/o Kathalu Pardeshi,
Age: Major, Occ: Driver,
R/o. Shahgad, Tq. Ambad, Dist. Jalna.
4. The Maharashtra State Road Transport
Corporation Ltd., Jalna, Depot Jalna,
Through Divisional Controller, Jalna. ...Respondents

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Mr. S.M. Godsay, Advocate for appellant
Mr. L.S. Mahajan, Advocate h/f Mr. D.S. Bagul, Advocate for respondent
No. 4.

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CORAM : N.W. SAMBRE, J.

DATE : 26th JUNE, 2015

ORAL JUDGMENT :

This appeal is by original respondent No.3-Insurance

Company questioning the award delivered by Motor Accident Claims Tribunal, Jalna on 07/10/1999 in Motor Accident Claims Petition No. 01 of 1995 allowing the claim petition preferred by claimant Mumtaj Begum-respondent No.1 to the present appeal, whereby respondent Nos. 1 to 3 to the claim petition were jointly and severally held responsible for payment of compensation of Rs.1,20,000/- with costs and interest @ 12% p.a. from the date of petition.

2. Parties herein shall be referred to by their status in the claim petition.

3. The brief facts, as are necessary for deciding the appeal, are as under.

The claimant brought in action the claim petition alleging therein that she was travelling on 06/02/1994 by matador No. MH-20/8904 from Wadigodri to Ambad. It is claimed that when the matador reached near Jirpi phata, one State Transport Bus bearing Registration No. MCA/7944 came from opposite direction and there was collision in between two vehicles i.e. matador and S.T. bus. The claimant, as such, alleged that she sustained serious injuries on her head, ear, back, chest and left hand finger. She was treated at in hospital at Ambad and then she was sent to Government Hospital,

Aurangabad, resulting into operation on her left hand and three fingers. According to her, she spent around Rs.20,000/- for her treatment, medicine and Rs.5000/- for transportation.

4. It is claimed that she is in Government service and working as a Female Health Visitor. The duty assigned to her was to assist to Doctor in operation of patients and also to carry out duty of nursing i.e. administering injections, medicines etc. According to the claimant, in view of amputation of her left hand fingers, she was unable to perform her job properly as rods are also fitted in her left hand. According to her, she spent another Rs.25,000/- on her treatment.

5. Respondent No.1-owner of the matador has not filed any written statement and respondent No.2-driver was proceeded *exparte*.

6. Respondent No.3-present appellant Insurance Company filed written statement at Exhibit-22. It is alleged by the Insurance Company that the claimant has not sustained alleged serious injuries, so also, she has not suffered permanent disability. According to insurance company, it was driver of the bus who was rash and negligent in driving the bus. Amongst other contentions as regards

breach of policy was raised. It is claimed that the claimant was gratuitous passenger and hence, there is breach of policy conditions.

7. Original respondent No. 4 Maharashtra State Road Transport Corporation at Exhibit-21 filed written statement and denied the claim and alleged that the driver of the matador was rash and negligent in handling his vehicle.

8. The tribunal framed issues at Exhibit-39 and answered the same in favour of the claimant. As such, present appeal.

9. Mr. Godse, learned Counsel for the appellant, while questioning the legality and validity of the award, would urge that the tribunal has failed to consider the status of the claimant as that of gratuitous passenger and according to him, the claim petition ought to have been dismissed, as there was breach of policy conditions. Apart from above, he would urge that the disability as is claimed by the claimant was not established and sought reversal of the award delivered by the tribunal.

10. The respondents though served, none appears.

11. In view of the pleadings of the respective parties before

the M.A.C.T., the submissions are required to be assessed, in the light of evidence and pleadings before the tribunal.

In view of the submissions of the appellant, the point that falls for consideration of this Court is, whether the tribunal has committed an error of law in awarding the compensation to the claimant, particularly when the ground of breach of policy was raised?

12. With the assistance of learned Counsel, I have gone through the observations made by tribunal, findings recorded in the background of evidence on record. It is required to be noted that so as to prove the claim in the petition, the claimant deposed at Exhibit-29 thereby proving the accident on 06/02/1994 when she was travelling in matador No. MH-20/8904, which was insured with the present appellant. It is also deposed by her that when bus came from opposite side, the accident took place which has resulted in sustaining serious injuries to her. In support of her claim so as to establish the accident in question, she has produced the copy of F.I.R. at Exhibit-30, spot panchnama at Exhibit-31 which depicts the spot of accident as Shahgad Ambad road. The accident in question took place at about 40' away from bridge, which is located near Jirpi phata. It is noticed from spot panchnama that matador which could

have been on the eastern side of the road was proceeding towards northern side i.e. Ambad side and as such, after uprooting two road boundry stones, it gave dash to bus. The bus was got damaged from left side i.e. from cleaner side. From spot panchnama, it is depicted that the S.T. bus was on the correct side, whereas matador was on the wrong side of the road.

13. Having regard to the above, the tribunal held that it was driver of the matador who was rash and negligent in driving and held responsibility of respondent No.2 to pay compensation. In support of claim in the petition, the claimant has produced injury certificate at Exhibit-32, admission and discharge card of Government hospital, disability certificate at Exhibit-36 depicting 42% disability and as such, proceeded to award compensation in question.

14. It is required to be noted from the record that the appellant herein has come out with a case of breach of policy conditions by filing written statement at Exhibit-22. However, perusal of the evidence reflects that apart from evidence of the claimant, the appellant herein in support of its stand of breach of policy has not examined any witness to discharge its burden. It is well settled that in case if the insurance company claimed breach of policy conditions then insurance company is duty bound to discharge its burden by

establishing such breach.

15. As the appellant insurance company has neither examined any witness in support of issue of breach of policy conditions, nor any documentary evidence is brought on record to that effect, in my opinion, the said issue was rightly not dealt with by the tribunal.

16. In view of above observations, no case for interference is made out. The appeal fails, stands dismissed.

17. Consequently, civil application stands disposed of.

[N.W. SAMBRE, J.]