IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

...

917 FIRST APPEAL NO. 986 OF 2002

RAVINDRA NARAYAN KALAL
VERSUS
SHRAWAN NARAYAN PATIL & ORS.

...

Advocates for Appellant : Mr.C R Deshpande, Mr. V P Raje and Mr. P P Runwal
Advocate for Respondent No.6 :Mr. S. L. Kulkarni
Advocate for Respondents 2 to 5 : Mr.P. S. Pawar

...

CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The respondents/claimants had filed an application for compensation under the provisions of the Motor Vehicles Act. The same is partly allowed against the present appellant. The insurance company is exonerated. The owner has filed the present appeal.

2. Mr. Deshpande, the learned counsel for the appellant submits that the insurance policy covers nine passengers. The deceased was not a fare paying passenger. When the policy covers nine passengers, the insurance company cannot be exonerated from payment of compensation amount. The learned counsel submits that the insurance company did not produce entire policy and only produced the cover note. The present appellant could not appear

and file his written statement and adduce evidence. Opportunity be given to the appellant to adduce evidence.

3. Mr. Kulkarni, the learned counsel for the insurance company supports the judgment and submits that it is a case of breach of policy. Fare paying passengers are not covered under the policy. The passengers covered under the policy are gratuitous passengers. As he deceased was not the gratuitous passengers his liability is not covered.

4. I have considered the judgment so also I have gone through the record and proceedings.

5. Widow/claimant has deposed that the deceased was travelling in the vehicle as he was acquainted with the driver of the said vehicle. Whereas, PW-2 has stated that Rs.8/- were paid for carrying utensils. In the spot panchanama, utensils are nowhere found on the spot. As such, the case put forth by the claimant itself is not clear as to whether the deceased was fare paying passenger or not. The FIR states that the deceased and the claimants were travelling as fare paying passengers. Considering the totality of the evidence, the claimants have not proved that that the claimant was gratuitous

passenger. The case put forth by the claimant is that he was travelling without paying any fair and or fare was paid for utensils.

6. It appears to be breach of policy. The judgment of the Apex Court in the case of **S. Iyyapan Vs. United India Insurance Company Ltd. and another AIR 2013 SUPREME COURT 2262** can be resorted to, wherein the insurance company can be directed to pay first and then recover from the owner.

7. In the result, the order passed by the tribunal is modified to the extent that the original opponent no.2 present appellant is liable to pay claimants Rs.2,41,000/- inclusive of no fault liability as directed by the tribunal with interest @ 9% per annum from the date order of the tribunal till realization. The original opponent no.3 insurance company shall pay the said amount first to the claimants and then recover from the owner i.e. the present appellant.

8. The first appeal is accordingly disposed of. No costs.

(S. V. GANGAPURWALA, J.)

JPC