

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 855 OF 2013
WITH
CIVIL APPLICATION NO. 4147 OF 2013
AND
CIVIL APPLICATION NO.6385 OF 2015

The New India Assurance Company Ltd.,
a Subsidiary of the General Insurance
Corporation of India and a Company
Incorporated under the Companies Act
having one of its Divisional Office at
Adalat Road, Aurangabad
Through its Manager(Legal Hub) &
Authorized signatory

...APPELLANT
(Orig. Resp. No. 2)

VERSUS

- 1) Lahijabai w/o Hassaji Amle,
Aged 70 years, Occ. Household,
R/o Shriram Colony, Sailu,
Dist. Parbhani
- 2) Avinash s/o Bhimrao Amle,
Aged 22 years, Occ. Education,
R/o as above
- 3) Akash s/o Bhimrao Amle,
Aged 21 years, Occ. Education,
R/o as above
- 4) Anil s/o Jivanrao Bhise,
Aged 30 years, Occ. Business,
R/o Hutatma Smarak, jintur,
Taluka Jintur, Dist. Parbhani

...RESPONDENTS
(R.Nos. 1-3: Orig.
claimants. R.No.4:Orig
R.No.1)

Mr A. B. Kadethankar, Advocate for appellant;
Mr H. I. Pathan, Advocate for respondent Nos. 1 to 3;
Mr A. S. Lomte, Advocate for respondent No. 4

CORAM : N.W. SAMBRE, J.

DATE : 12th June, 2015

ORAL ORDER

With the consent of parties, the appeal is taken up for final disposal at the stage of admission.

2. Respondents no.1 to 3/original claimants preferred M.A.C.P. No.296 of 2007 before the Motor Accident Claims Tribunal, Parbhani, under the provisions of section 166 of the Motor Vehicles Act, claiming compensation of Rs.5,00,000/-, on account of death of Surekha in a vehicular accident took place on 28th November, 2006. In the above referred accident, the vehicle involved was tempo bearing registration No.MH-22-2398.

3. Upon a complaint lodged to police station, an offence bearing C.R. No.174 of 2006, under sections 304-A, 338, 337 and 279 of the Indian Penal Code came to be registered.

4. In support of the claim petition, respondents no.1 to 3-claimants adduced evidence and the said witness was neither cross-examined on behalf of respondent no.4 nor did he examine any witness on his behalf.

5. The appellant adduced oral evidence in support of its defence.

6. Based on the claim put-forth by the parties, the Tribunal framed issues and answered the same as under :-

Sr.No.	ISSUES	FINDINGS
1	Do petitioners prove that deceased Surekha Bhimrao Amle died in vehicular accident, which took place on 28/11/2006 near Shinde Petrol Pump on Jalna-Jintoor road, District Parbhani due to rash and negligent driving by the driver of tempo bearing No.MH-22/2398 ?	Yes
2	Does respondent no.2 prove that the motorcyclist contributed in the occurrence of accident ?	No
3	Does respondent no.2 further prove that the owner of tempo committed breach of policy conditions ?	Yes
4	Is the petition bad for non-joinder of necessary parties ?	No
5	Are the petitioners entitled for compensation. If yes, at what rate and from whom ?	Rs.3,50,000/- from respondent No.1 (including NFL amount)
6	What order or award ?	As per final order

7. The defence that was raised by the appellant – insurance company was that there was a fundamental defect in the policy itself as there was a breach of policy, as the insured vehicle was driven by a person who was not holding a valid licence.

8. Learned Counsel appearing on behalf of the appellant, in addition to above, would urge that though a liberty is given to recover the amount of compensation from the vehicle owner, the same cannot be taken to its logical end in view of the fact that the process is cumbersome.

9. The above referred submissions are objected on behalf of respondents no.1 to 3 – claimants. Learned Counsel appearing on behalf of respondents no.1 to 3 would urge that the Tribunal has already taken a note of the fact that the driver of the offending tempo was holding a licence in respect of light motor vehicle. He would further urge that the offending vehicle was insured with the appellant as a goods carriage commercial vehicle.

10. Based on the evidence of the parties and the law laid down by the Apex Court, in the matter of National Insurance Co. Ltd. vs. Swaran Singh & ors., reported in 2004 (1) AJR-272 (SC) and other case law, the Tribunal has awarded compensation with liberty to the present appellant to recover the amount of compensation from respondent no.4 – the vehicle owner.

11. If the above referred contentions of the present appellant are accepted, in my opinion, the fact that the vehicle was insured in an appropriate category with the present appellant and the appellant was duty bound to honour the claim, unless the breach is fundamental in

nature, will be given a complete go-bye.

12. Perusal of the impugned award rendered by the Tribunal reflects entire consideration of the factual matrix and the evidence brought before it.

13. In view of above, in my opinion, no case for interference in the appellate jurisdiction is noticed. Thus, the appeal fails and stands dismissed with no order as to costs.

14. In view of dismissal of the First Appeal, Civil Application No.4147 of 2013 does not survive and stands disposed of.

15. So far as Civil Application No.6385 of 2015 seeking withdrawal of the amount is concerned, the amount deposited by the appellant – insurance company in this Court, be transferred to the Motor Accident Claims Tribunal, Parbhani. In view of death of respondent no.1, respondents no.2 & 3 will be at liberty to take appropriate steps as are available in law along with a prayer for withdrawal of the amount, which shall be dealt with by the Tribunal, in accordance with law. With these directions, Civil Application No.6385 of 2015 stands disposed of.

(N.W. SAMBRE, J.)

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