IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 943 OF 2006

New India Assurance Co. Ltd.,
Branch 2A, Indore (M.P.)
through its authorized signatory
Mr. Hiralal s/o. Namdeo Vispute,
Age 50 years, Occ. Assistant Manager,
R/o. Aurangabad.

.. APPELLANT.

VERSUS

1] Bhagwan S/o. Madhav Koli,
Age 43 years, Occ. Tailor,
R/o. Shirale, Tq. Sindkheda,
Dist. Dhule. .. ORI. CLAIMANT

2] Bashir Shaikh Daud Shaikh
Age 47 years, Occ. Driver,
R/o. Mechanic Nagar,
Indore (M.P.)

3] S. Harbanssingh.
C/o. S.Ishwarsingh,
Age 53 years, Occ. Business,
R/o. 18/p, Mechanicnagar,
Indore (M.P.) .. RESPONDENTS 1 & 2.

Mr. Dhananjay Deshpande, Advocate for the appellant
Mr. S.P. Brahme, Advocate for respondent No.1.

CORAM : A.M. BADAR, J.
DATE : 8th DECEMBER,2015.

ORAL JUDGMENT :-

1] By this appeal under Section 173 of the Motor Vehicles Act, 1988, original respondent No.3 Insurance Company is challenging the judgment and award passed by the learned MACT, Dhule on 2.12.2005, in

MACP No. 743 of 1999, thereby directing respondent Nos. 1 to 3 therein (i.e. present appellant insurance company, owner and driver) to bear the burden of paying compensation to original claimant , jointly and severally alongwith interest from the date of petition till its realization.

2] Respondent No.3 herein was original respondent No.2 (owner) whereas, respondent No.1 herein was the original claimant. The respondent No.2 herein was the respondent No.1 (driver).The present appellant Insurance Company was the original respondent No.3 in the claim petition before the MACT, Dhule. For the sake of convenience parties would be referred to in their original capacity.

3] Facts in nutshell are thus :-

[a] The claimant prayed for award of compensation on account of injuries suffered by him in the vehicular accident by filing claim under Section 166 of the Motor Vehicles Act. According to claimant, while he was proceeding from Gavhane Fata to Dhamnod, by goods truck carrying with him 4 quintals of cotton, the said truck met with an accident near village Sangvi. The claimant alleged that he was injured in that accident occurring on 30.12.1991, arising out of use of goods truck bearing registration No. MP-09/8904, owned by respondent No.2 insured with respondent No.3 and driven by respondent No.1. Hence, the claimant prayed for awarding compensation of Rs. 75,000/- from the respondents. Owner and driver of the goods truck failed to participate in the proceedings. Respondent No.3

insurance company opposed the claim by contending that it is not liable to pay compensation to the claimant.

[b] After framing issues, parties went for trial and the learned Tribunal, on assessment of the evidence available on record, came to the conclusion that the injured claimant was travelling in a goods truck. The learned Tribunal in para. 17 of the Award, concluded that the gratuitous or fair paying passengers in the goods truck are not entitled to get compensation from the insurance company, under the Act only policy and such victims can claim compensation from the driver and owner of the truck involved in the accident. The Tribunal after holding that as the claimant was travelling in the goods truck as owner of the goods, he is covered under the Act policy made insurance company liable alongwith other respondents to pay compensation of Rs. 32,000/- with interest @ 9% p.a. to him.

4] Shri Deshpande, learned counsel appearing for the Insurance Company/appellant vehemently argued that the learned Tribunal committed an error of law in holding that the insurance company is liable to indemnify the owner of the goods in the accident resulting in injury to him while travelling in the goods truck. By relying on judgment of the Honourable Supreme Court in the matter of ***New Indian Assurance Company Ltd. Vs. Asha Rani and others, 2003 ACJ 1,*** and judgment of this Court in First Appeal No. 15/2002, ***Oriental insurance company vs. Kailas Omprakash Agrawal,***decided on 1st September, 2015, Shri Deshpande submitted that prior to the amendment effected in the year 1994, the occupant in the goods vehicle was not entitled for any compensation from the insurance company.

5] As against this, learned counsel appearing for the respondent/original claimant justified the impugned award by contending that as the relief was sought under social welfare legislation, the learned Tribunal was perfectly justified in awarding compensation to the claimant from Insurance Company also.

6] After hearing the rival submissions and after going through the R. & P., it needs to be noted at this juncture that the accident in question causing injury to the claimant occurred on 30.12.1991. The claimant was travelling in goods truck, albeit, with his 4 quintals cotton loaded in it. However, one will have to examine, whether the insurance company can be made liable to indemnify the insured in respect of the accident resulting in injury to the occupant in goods vehicle, in an accident happening prior to the year 1994 i.e. before the amendment dated 14.11.1994 to the Motor Vehicles Act.

7] At this juncture, it apposite to quote paragraph No.10 of the judgment of the Honourable Supreme Court in ***Asha Rani's case*** (supra) which reads thus :-

> "10. *In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act, 1939 are identical with Section 147 (1) of the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful*

scrutiny of the provisions would make it clear that prior to the amendment of 1994, it was not necessary for the insurer to insure against the owner of the goods or his authorized representative being carried in a goods vehicle. On an erroneous impression, this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorized representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicle Amended Act of 1994 is examined, particularly Section 46 of the Act 6 of 1991 by which expression, "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorized representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorized representative being carried in the vehicle. The object and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorized representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of the inherent position which is there in the statute, but a plain meaning being given to the words used in the statute as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended *provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorized representative carried in the vehicle" which was added in the preexisting expression "injury to any person" is either clarificatory or amplification of the preexisting statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorized representative being carried in a goods vehicle when that vehicle meet with an accident and the owner of goods or his representative either dies or suffers bodily injury. the judgment of this Court in Satpal case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorized representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.*"

8] Bare perusal of para.10 of the judgment in the case of Asha Rani makes it clear that prior to amending Act of 1994, insurance company was not liable to indemnify the insured in respect of accident resulting in injury to the occupants of the goods vehicle. It was not mandatory at that time to insure owner of the goods or his representative travelling in the goods truck alongwith goods. As such, in the case in hand also, the appellant insurance company ought not to have been made liable to pay compensation on account of injuries suffered by the claimant while travelling in goods vehicle, as the policy of insurance was Act only policy.

9] In the light of the above discussion, the impugned judgment and award to the extent of making present appellant/insurance company liable to pay compensation amount is quashed and set aside. Amount, if any, deposited by the appellant/insurance company be refunded to it. First appeal is disposed of accordingly with no orders as to costs.

[A.M. BADAR, J]

grt/-