IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.95 OF 1998

WITH

CIVIL APPLICATION NO.1057 OF 2008

The Oriental Insurance Co. Ltd., Br. Office Sant Krupa Market, Nanded, through its Present Branch manager, Nanded, now through It's Divisional Manager, `Inderprakash', Adalat Road, Aurangabad : ..Appellant

V E R S U S

1) Sangita w/o. Dattatraya Wadkute, aged 22 years, occu.Household

2) Mankarnabai w/o. Sambharao Wadkute, aged 45 years, occ. Household

3) Director, Prasanna Tours and Travels Ltd., 396, Shanivarpeth, Pune 30 Cosmos Bank Building, Opp. Onkareshwar Temple, Pune

4) Bhagwat Narayan Kashiram, Proprietor of Sheetal Travels and owner of Luxury Bus No. MH-30-B-3540 r/o. Mulkharjee Bangalow, Rauvtwadi, Akola

5) The Manager, National Insurance Co. Ltd., Branch at District Akola

6) Maharashtra State Road Transport Corporation Ltd., Bombay through its Divisional Controller, Division Office, opp. Workshop, Nanded : ..Respondents

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Mr.S.M.Godsay, advocate for appellants

Mr.P.P.Bafna, advocate for respondent no.5

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CIVIL APPLICATION NO.2484 OF 1998
IN
FIRST APPEAL NO.95 OF 1998

1 Sangita w/o. Dattatraya Wadkute, aged 22 years, occu.Household

2 Mankarnabai w/o. Sambharao Wadkute, aged 45 years, occ. Household

Both residents of Waula, Tq. Hadgaon, District Nanded : ..Appellants

V E R S U S

1)	The Oriental Insurance Co. Ltd., Br. Office Sant Krapa Market, Nanded, through its Present Branch manager, Nanded	:	
2)	Director, Prasanna Tours and Travels Ltd., 396, Shanivarpeth, Pune 30 Cosmos Bank Building, Opp. Onkareshwar Temple, Pune	:	
3)	Bhagwat Narayan Kashiram, Proprietor of Sheetal Travels and owner of Luxury Bus No. MH-30-B-3540 r/o. Mulkharjee Bangalow, Rauvtwadi, Akola	:	
4)	The Manager, National Insurance Co. Ltd., Branch at District Akola	:	
5)	Maharashtra State Road Transport Corporation Ltd., Bombay through its Divisional Controller, Division Office, opp. Workshop, Nanded	:	..Respondents

None for applicants

Mr.S.M.Godsay, advocate for respondent no.1

Mr.P.P.Bafna, advocate for respondent no.4

CORAM : M.T. JOSHI, J.
DATE : FEBRUARY 17, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to pay compensation in a proceedings under Section 163-A of the Motor Vehicles Act (for short “the Act”), present appeal is preferred by the insurer of one of the buses involved in the accident.

3] The facts on record would show that on 1st October, 1995, the deceased Dattatraya was driving the bus of Maharashtra State Road Transport Corporation (M.S.R.T.C.) i.e. present respondent no.6. On the day of the incident, at a religious place i.e. in front of the temple of Renukadevi at Mahur, there was traffic jam on the road. Therefore, the deceased alighted from the bus to find out as to why, the traffic jam was there. At

that time, a luxury bus of present respondent no.4 - Sheetal Tours and Travels bearing registration No.MH-30-B-3540 was opposite to the bus of M.S.R.T.C. and another bus bearing registration No.MH-12-R-0654 owned by present respondent no.3 – Prasanna Tours and Travels was behind the said bus of Sheetal Travels. Present appellant is the insurer of the said bus owned by present respondent no.3 – Prasanna Tours and Travels.

4] According to the evidence of the Conductor of the bus of M.S.R.T.C., while the deceased was inspecting the situation on the road, the bus of Prasanna Travels gave push to the bus of Sheetal Travels in turn, the bus of Sheetal Travels gave dash to the bus of M.S.R.T.C. due to which, the deceased was sandwiched between the buses and died.

5] Learned Member took into consideration the maximum limit of Rs.40,000/- permissible under the second scheduled of Motor Vehicle Act and accordingly, awarded the compensation.

6] Learned counsel for the appellant submits that the evidence on record would show that the bus insured with the present appellant was not involved in the actual accident. He submits that under Section 163-A of the Act, the requirement is that at the time of the accident, the bus should be in use, and the same is not the fact in the present case. He relies upon the ratio laid down by the Hon'ble Supreme Court in the case of ***Bijoy Kumar Dugar Vs. Bidyadhar Dutta and ors, 2006(4) Mh.L.J. 178.***

7] On the other hand, learned counsel for the respondents support the reasoning of learned Member of Motor Accident Claims Tribunal.

8] Considering the material on record, following point arises for my determination :-

> Whether present appellant – insurer can be solely made responsible to pay the compensation under Section 163-A of the Act ?

. My finding to the above point is in the affirmative and the appeal is, therefore, dismissed for the reasons to follow.

R E A S O N S

9] It should be noted that the bus insured with the present appellant was set in motion which, ultimately, gave dash to another luxury bus standing in front of it due to which, said bus gave dash to the bus of M.S.R.T.C. and the deceased was sandwiched in between the two buses. All the buses were on the road and the two luxury

buses were actually set in motion during the accident. It cannot, therefore, be said that none of the buses was in the use. In that view of the matter, learned Member was right in coming to the conclusion that the present appellant would be liable to pay the compensation under Section 163-A of the Act.

10] In the result, the appeal is dismissed without any order as to costs.

11] In view of dismissal of the appeal, pending Civil Applications do not survive and stand disposed of.

[M.T. JOSHI, J.]

kbp