

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2079 OF 2013
WITH
CIVIL APPLICATION NO.2373 OF 2015

Shriram General Insurance Co. Ltd.,
Second Floor, Ashoka Mall Opposite
Sun & Sand Hotel, Bund Garden Road, Pune.
Through it's Branch Development Manager
At Aurangabad

...APPELLANT
(Orig. Respondent
No. 3)

VERSUS

1) Harbano w/o Syed Bashir Patel,
Age : 40 years, Occ. Household,
R/o Bazar Galli, Khultabad,
Tq. Khultabad, Dist. Aurangabad

2) Masrat D/o Syed Bashir Patel,
Age: 22 Yrs. Occ. Household,
R/o As above

3) Syed Amin S/o Syed Bashir Patel,
Age: 20 Yrs. Occ. Household,
R/o As above

4) Syed Amer S/o Syed Bashir Patel,
Age: 18 Yrs. Occ. Student,
R/o As above

(Orig. respondents
No. 1 to 4)

5) Balu S/o Gangadhar Kale,
Age: 26 Yrs. Occ. Driver, R/o Bazar Galli,
Khultabad, Tq. Khultabad,
Dist. Aurangabad

(Orig. respondents
No. 1 and 2)

6) Renukadas S/o Murlidhar Warkad,
Age: Major, Occ. Business,
R/o Mausala, Khultabad,
Dist. Aurangabad

...RESPONDENTS

Mr V. N. Upadhye, Advocate for appellant;
Mr Shaikh Faruk Vazir Patel, Advocate for respondent Nos. 1 to 4;
Mr P. F. Patni, Advocate for respondent Nos. 5 and 6

CORAM : N.W. SAMBRE, J.

DATE : 10th April, 2015

ORAL ORDER :

This is an appeal under section 173 of the Motor Vehicles Act by the insurance company, questioning the legality and validity of the award dated 22nd August, 2012, passed by the Member, Motor Accident Claims Tribunal, Aurangabad, in M.A.C.P. No.268 of 2011.

2. The operative part of the said award reads thus :-

“1. The claimants are entitled to get Rs.3,66,000/- towards compensation inclusive of the amount under the head “no fault liability”.

2. Respondent nos.1 to 3 do pay Rs.3,16,000/-, jointly or severally, to the claimants with interest @ Rs.9% p.a. From the date of institution of the petition i.e. 22.03.2011 till the date of payment of the amount of compensation into the Tribunal.

3. The amount of compensation be apportioned amongst the claimants as under :-

Claimant No.1 : Rs.1,21,000/- + proportionate costs and interest

Claimant No.2 to 4 :Rs.65,000/- each + proportionate costs and interest

4. On depositing of the amount into the Tribunal, it be paid to the claimants by account payee cheques.

5. Respondent Nos.1 to 3 do pay cost of this petition to the claimants and shall bear their own.”

6. In view of the submissions made by Mr Upadhye, learned Counsel appearing on behalf of the appellant, following issue arises for consideration :-

Whether, in the light of Rule 108 of the Maharashtra Motor Vehicles Rules, 1980, the claim of the claimants was admissible, deceased Syed Bashir Syed Nasir Patel being a gratuitous passenger ?

7. Few facts, relevant for the decision of this appeal, are as under :-

The claimants filed M.A.C.P. No.268 of 2011 on 23rd March, 2011, praying compensation of Rs.4,00,000/- on account of accidental death of Syed Bashir Syed Nasir Patel. The claimants are widow, daughters and

sons of the deceased.

8. It is claimed by the claimants that deceased Syed Bashir was an agriculturist and had loaded his agricultural produce, such as maiz and soyabean in Tata Tempo bearing registration No.MH-04-AG-4133, for selling the same in Lasur road market. The said vehicle turtled, resulting into death of said Bashir on 29th October, 2010.

9. Respondents no.1 and 2 to the claim petition, i.e. owner and driver filed their written statement at Exh.13, whereas respondent no.3 – insurance company filed its written statement at Exh.33. Based on the denial of the claim by the insurance company, the Tribunal framed issues and answered the same, as follows :-

Sr. No.	Issues	Findings
1	Whether the petitioners prove that Syd. Bashir Syd. Nasir Patel died in motor vehicular accident dated 29.10.2010 ?	Yes
2	Whether the petitioners prove that the accident took place due to rash and negligent driving of vehicle Tempo bearing registration No.MH-04-AG-4133 owned by respondent no.2, driven by opponent no.1 and insured with opponent no.3 ?	Yes
3	What is just and reasonable amount of compensation and against whom it is to be awarded ?	Rs.3,66,000/- from respondent nos.1 to 3 jointly and severally
4	What order and award ?	Petition is partly allowed

10. The star point sought to be raised by Mr Upadhye, learned Counsel appearing on behalf of appellant – insurance company is, whether late Bashir being a gratuitous passenger, the claimants were entitled for compensation and whether the Tribunal was right in granting such compensation in view of the provisions of Rule 108 of the said Rules.

11. In support of his contention, Mr Upadhye has taken me through the record of the Tribunal including that of criminal investigation and evidence recorded. According to him, the son of deceased Bashir, who was examined as a witness was unable to state the details as regards hiring of the vehicle. According to him, even the fact about loading of the agricultural goods in the said vehicle was not proved, as no documentary evidence in support thereof was produced. In addition to above, Mr Upadhye would urge that only one passenger is permissible along with goods in the light motor vehicle and has sought to place reliance on Rule 108 of the said Rules. According to him, in view of the fact that one more passenger has filed claim petition before the Tribunal and the fact that in the first information report names of seven passengers are mentioned, *prima facie* proves breach of the policy conditions. He would further urge that irrespective of how many persons have suffered injury in the accident or how many claimants have lodged claims against the insurance company, what is required to be noted is the number of passengers carried in such vehicle and according to him, breach of policy was very

much established.

12. While countering the above referred submissions, learned Counsel appearing on behalf of respondents no.1 to 4/original claimants, would urge that the occurrence of the incident and death of Bashir is not in dispute. According to him, it is also not in dispute that the vehicle in question was insured with the appellant herein. He claims that based on the evidence, viz. First information report Exh.20, spot panchnama Exh.21 and post mortem report Exh.22, what could be inferred is there were only three passengers in the vehicle. According to him, the Tribunal has rightly analyzed the factual matrix and the evidence brought before it and thus prayed for dismissal of the present appeal.

13. It is not in dispute that the vehicle in question, i.e. Tata Tempo is owned by respondent no.2 before the Tribunal. It is also not in dispute that the same was insured with the present appellant and policy thereof was produced at Exh.27. So far as the holding of valid driving licence is concerned, the same was also established by virtue of Exh.37, i.e. driving licence of the Driver. What is required to be noted from the record of the Tribunal is that the vehicle in question though was registered as a light motor vehicle, the same was having laden weight of more than 990 Kgs. and as such was entitled to carry more than three passengers.

14. The said fact could be established from the language employed in Rule 108 of the said Rules.

15. The fact that late Bashir was carrying his agricultural produce in the vehicle in question and the said vehicle had met with an accident was rightly established before the Tribunal based on the investigation papers and the oral testimony of the witnesses. Once it is established that late Bashir was travelling in the vehicle in question, in my opinion, the claim put-forth by the learned Counsel for the appellant, that only one passenger was permitted and there was a breach of policy condition, is required to be rejected. The above referred contentions are rejected, particularly having regard to the fact that Rule 108 contemplates carrying of three passengers and in the said vehicle late Bashir was one of the passengers, who was travelling along with the goods.

16. In view thereof, in my opinion, no case for interference is made out. First Appeal being sans merit stands dismissed.

17. In view of dismissal of the appeal, Civil Application No.2373 of 2015 for withdrawal of the amount, stands allowed.

(N.W. SAMBRE, J.)

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