IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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927 FIRST APPEAL NO. 796 OF 2008

NATIONAL INSURANCE CO. LTD AURANGABAD
VERSUS
SARASWATIBAI BANSILALJI TOSHNIWAL AND ORS

...

Advocate for Appellant : Mr. D V Soman
Advocate for Respondents 1 to 5 : Mr. S. S. Rathi
Advocate for Respondent No.6 : Mr. Dhananjay Deshpande
Advocate for Respondent No.7 : Mr. R. R.Chandak

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CORAM : S. V. GANGAPURWALA, J.

DATE : 27th October, 2015

PER COURT :

1. The application filed by the present respondents claimants under section 166 of the of the Motor Vehicles Act is partly allowed. Aggrieved thereby, the original opponent No.4 has filed the present appeal.

2. Mr. Soman, the learned counsel submit that there was no policy filed by the respondents so as to invoke the liability of the present appellant. According to the learned counsel, when policy itself is not there, the present appellant cannot be made liable. According to learned counsel even aspect of negligence has not been properly considered by the tribunal.

3. Mr. Rathi, the learned counsel submits that the

deceased was driver of the other vehicle which was insured by the present respondent-Oriental Insurance Company. According to the learned counsel, policy has also been produced in the present case.

4. The basic defence of the present appellant is that the vehicle in question was not insured by the appellant. In the present appeal, the copy of insurance policy is produced on record. The same was handed over to the learned counsel for the appellant. The learned counsel for the appellant, after verifying from the appellant and upon instructions from the appellant, confirms the said policy to be genuine. The said policy was in force as on the date of the accident. In view of the fact that the said policy was in force as on the date of accident, the liability of the insurance company is required to be upheld. In fact the appeal basically is based upon no insurance. Once the policy has been produced by the appellant and has been confirmed by the appellants, no other defence would now be available. The first appeal is dismissed. No costs.

5. It is submitted that the other insurance company has deposited 50% of the amount in First Appeal No. 1590/2007. According to the learned counsel for the

appellant, it would be a case of contributory negligence, wherein liability would be to the extent of 50%, each. The court has held joint and several liability.

(S. V. GANGAPURWALA, J.)

JPC