IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.8 OF 2002
WITH
CIVIL APPLICATION NO.122 OF 2002

Oriental Insurance Co. Ltd.,
Market Yard, Near Bus Stand,
Ahmednagar, through its
authorised signatory,
Div. Mangar, Aurangabad ..Appellant

Versus

1] Dhannalal Kesharchand Ajmera,
Age 44 years, occ. Business
(now nil), r/o. Nyaydongari,
Tq. Nandgaon, Dist.Nasik

2] Ramsaranlal s. Pal,
Age 50 years, occ. Business,
r/o. 14, Nagarwala Road,
Ahmednagar

3] Kishor Sukhdeo Pawar, age 24
years, occ. Driver,
r/o. Talegaon, Tq. Chalisgaon,
Dist.Jalgaon
[Resp. No.3 abated on 5/8/2008
as per Court's order]

4] S.R.Chavan, age 45 years,
occ. Business, r/o. Yeshwant
Colony, Aurangabad Road,
Aurangabad ..Respondents

Mr.Dhananjay Deshpande, advocate for appellant

None present for the respondents

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CORAM : M.T. JOSHI, J.
DATE : MARCH 10, 2015

ORAL JUDGMENT :

Heard learned counsel for the appellant – insurer. None present for the respondents, though the matter was adjourned from time to time in view of absence of learned counsel for the respondents.

2] The issue involved in this appeal is as to whether, present appellant i.e. insurer of the vehicle is liable to pay the compensation to the injured claimant.

3] The facts would show that the injured claimant was travelling as a passenger in a private jeep bearing registration No.MGM-305 from Chalisgaon to Nayadongari village on 9th June, 1993. On that day, said jeep met with an accident.

4] According to respondent no.1 – claimant, the accident has occurred due to rash and negligent driving of the jeep by respondent no.3 – Kishor Pawar. Therefore, the claim petition was filed against the driver of the jeep and present appellant – insurer. Pleadings regarding the nature of the injuries, expenses incurred, permanent disability were made and compensation of Rs. Fourt Lakhs was claimed.

5] The present appellant – insurer came with a case that as the jeep was a private vehicle, fare-paying passenger could not have been allowed. Therefore, there is breach of conditions of the policy of insurance and further risk of the passenger was not covered by the policy of insurance.

6] Learned Member of the Motor Accident Claims Tribunal, upon appreciation of the evidence, held that it was for the present appellant to prove that respondent no.1 – Dhannalal was allowed in the jeep as a fare-paying passenger and as the present appellant did not lead any evidence, it was held that the present appellant would also be liable to pay the compensation of Rs.2,87,000/- jointly and severally.

7] Mr.Deshpande, learned counsel for the appellant, submits that the risk of any passenger, fare-paying or gratuitous, was, at all, not covered by the policy of insurance. The policy of insurance was only an "Act Policy" and therefore, the issue, as to whether, the respondent no.1/claimant was a fare-paying passenger or gratuitous passenger, could not have arisen. He points towards the policy of insurance filed on record of the petition at Exhibit 21/1. In the circumstances, he submits that, the appeal may be allowed and present appellant – insurer may be exonerated from payment of the compensation. He relies upon the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Rattani and ors., AIR 2009 SC 1499.***

8] On the basis of this material, following point arises for my determination :-

> Whether the appellant – insurer is liable to indemnify the owner of the vehicle in payment of compensation ?

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

R E A S O N S

9] Perusal of policy of insurance would show that the risk of any passenger was not covered under the said policy. The basic premium of Rs.240/-

was paid. Besides it, Rs.15/- was paid for risk of the driver within the provisions of the Workmen's Compensation Act and thus, total premium of Rs.255/- was paid to the insurer. It was clearly a third-party policy additionally covering the risk of the driver only. In the circumstances, considering the material on record, the appellant – insurer is not liable to indemnify the owner of the vehicle in payment of compensation to the respondent no.1/the claimant. The appeal, therefore, deserves to be allowed.

10] In the result, the following order :-

a] The First Appeal is allowed without any order as to costs.

b] The direction issued by learned Member of Motor Accident Claims Tribunal to present appellant to, jointly and severally, pay the compensation to the claimant, is hereby set aside.

c] Instead, the claim petition filed by the claimant is dismissed as regards present appellant – insurer.

d] The statutory deposit made by the appellant – insurer be refunded to it after a period of six weeks from the date of this order.

[M.T. JOSHI, J.]

kbp