IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 956 OF 2012

The Oriental Insurance Co. Ltd.,
Through its Div. Manager, Central Phule
Market Jalgaon, Dist. Jalgaon,
Through its authorised signatory
Sr. Div. Manager,
Aurangabad D. O. Aurangabad ...APPELLANT
(Orig. Resp. No. 2)

VERSUS

1) Smt. Usha Daulat Nathani,
Age: 35 yrs., Occ. Household

2) Vinisha Daulat Nathani,
Age: 16 yrs., Occ. Education,
Minor U/g. Of Resp. No. 1, Mother

3) Smt. Savitribai Kanhaiyalal Tiwari,
Age: 58 yrs., Occ. Household

All R/o 34, Ganesh Nagar, In front of
Sant Hardasram Mangal Karyalaya,
Jalgaon, Dist. Jalgaon

4) Shri Dalbirsing
Age: 46 yrs., Occ. Transportation,
R/o Road No. 9, Bagan Oriy,
Jamshedpur (Jharkhand) ...RESPONDENTS
(Orig. Claimants &
Resp.No. 1)

Mr Dhananjay Deshpande, Advocate for appellant;
Mr M. V. Navandar, Advocate for respondent Nos. 1 & 2

CORAM : N.W. SAMBRE, J.

DATE : 12th June, 2015

ORAL ORDER

Heard Mr Deshpande, learned Counsel appearing on behalf of the appellant and Mr Navandar, learned Counsel on behalf of respondents no.1 and 2.

2. Mr Deshpande, learned Counsel appearing on behalf of the appellant, while assailing the award dated 30th March, 2012, rendered by the Member, Motor Accident Claims Tribunal, Jalgaon (hereinafter referred to as the “Tribunal”, for the sake of brevity), in M.A.C.P No.391 of 2003, has invited my attention to main contentions of the appellant, namely, that the policy in question was officially not issued by the appellant – insurance company and the evidence in support thereof, were not appreciated by the Tribunal and further, the format in which the insurance policy/cover note was issued was pertaining to passenger carrying vehicle, whereas the vehicle involved in the alleged incident is a goods truck. There is fundamental defect in the policy, apart from a specific denial of issuance of insurance policy.

3. Mr Navandar, learned Counsel appearing on behalf of respondents no.1 & 2/original claimants would urge that the witness to the accident P.W.2 Shankar has deposed in favour of the claimants. He would further urge that the claimants' witness no.1 has produced “AA” form at Exh.72

and insurance policy in the said form at Exh.72. According to him, the issue about issuance of insurance policy of the insured truck No.MP/23/D-1187, is a matter between the insurance company and the vehicle owner. He would urge that the Tribunal, having considered the existence of the policy, has rightly allowed the claim and, therefore, prayed for dismissal of the appeal.

4. One Daulat, who happened to be in blood relation of the original claimants, expired in the accident in question, resulting in filing claim under section 166 of the Motor Vehicles Act, seeking compensation of Rs.23,00,000/-. The incident in question occurred on 24^{th} January, 1999 when the vehicle in which Daulat was travelling met with an accident with a truck.

5. It is required to be noted that the vehicle owner has not entered into witness box. Thus, the Tribunal has proceeded to decide the claim petition in his absence. The appellant – insurance company contested the claim, which has prompted the Tribunal to frame issues at Exh.27 and answer the same as under :-

Sr. No.	ISSUES	FINDINGS
1	Whether deceased Daulat Kanhaiyalal Nathani died due to rash and negligent driving of goods truck MP-23/D-1187 driven by respondent no. 1Dalbirsing and on 24-01-1999 at about 7:30 in evening at Bhusawal ?	In the affirmative

2	Whether deceased Daulat himself was rash and negligent in driving Maruti Car bearing No. MH-19/C-7177 causing the accident ?	In the negative
3	Whether the truck in question was duly insured with respondent no. 2 The Oriental Insurance Company ?	In the affirmative
	Additional issue.1A Whether the copy of Policy of Insurance filed by the petitioners is forged and concocted ?	In the negative
4	Whether the petition is bad for non-joinder of necessary parties Ie. owner of Maruti Car ?	In the negative
5	Whether petitioners suffered damages in the amount of Rs. 23,00,000/- ?	As per final order
6	What order ?	Application is partly allowed with proportionate cost

6. The Tribunal, while dealing with the contentions raised by the appellant, has noticed that the insurance company has entered the official communication with Raipur office from where the policy in question was generated. The appellant – insurance company, as such, contended that at the relevant time, it was not the practice by the insurance company to issue the typed policy. According to the appellant, the certificate of insurance at Exh.50, as such, was not issued by it. Apart from above, as stated earlier, the learned Counsel appearing on behalf of the appellant would urge that the insurance company is not liable as the format in which the policy was issued was pertaining to passengers vehicle and not the goods vehicle.

7. The claim of the appellant – insurance company that it has stopped issuing typed policies since 1996, in view of the Circular issued by the Head Office, was not established by the appellant – insurance company by bringing on record any such policy/circular. Apart from above, the certified copy of the insurance certificate Exh.50, which is of the year 1998 is a typed copy, which was for the passenger vehicle and the vehicle involved in the accident is a goods truck, if analyzed on the background of the evidence, it is required to be noted that the said issue is in relation to internal administration of the appellant – insurance company. The said Exh.50 undisputedly is issued by Raipur Office as it contains the seal of office issuing the certificate and the office of the appellant at Jalgaon has sought details about the insurance policy. Raipur office, in reply to the above referred query, issued communication and has not mentioned that the truck in question was not insured with their office and has rather, not in specific terms denied the issuance of certificate of insurance Exh.50.

8. Rather, the appellant has chosen to appoint an investigator to investigate the above referred issue from the Regional Transport Officer of Raipur and the investigator, vide Exh.81 informed the appellant's office at Raipur, that the details are not available with the Raipur office. Once the appellant herein claims that Exh.50 is a fake and fabricated document of which certified copy was produced by respondents no.1 & 2/claimants, the burden was on the appellant to prove the same to be a fake and fabricated

document, which was not at all discharged by the appellant. The sample certificate Exh.78 produced by the appellant from from Chandrapur office will be hardly of any assistance to establish the said claim.

9. Apart from above, claimant no.1, while examining herself, has entered into the witness box and has also produced the tax returns of the deceased for the year 1996-97, 1997-98 and 1998-99, so as to establish the quantum of compensation.

10. In view of the above, the Tribunal has chosen to award the compensation.

11. In my opinion, the issue as is sought to be canvassed by the present appellant about false and fabricated policy, i.e. Exh.50 is not at all established. Thus, the appeal fails and stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

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