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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1724 OF 2009

United India Insurance Co. Ltd.,
Through its Divisional Manager,
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar
District – Ahmednagar

APPELLANT

VERSUS

1. Shaikh Shabbir Amir
Age-47 years, Occ- Business
R/o K. G. Road, Akole
District -Ahmednagar
2. Ajim Shabbir Shaikh
Age- 32 years, Occ – Business
3. Asif Shabbir Shaikh,
Age -30 years, Occ – Business
4. Hanif Shabbir Shaikh,
Age- 28 years, Occ – Business
5. Atik Shabbir Shaikh,
Age- 25 years, Occ – Business
6. Bhausahab Dagadu Chawdhari,
Age- Adult, Occ – Business,
R/o Mahesh Kirana Store,
Near S. T. Stand,
K. G. Road, At Post Akole,
District – Ahmednagar

RESPONDENTS

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Mr. A. B. Gatne, Advocate for the appellant
Mr. V. S. Bedre, Advocate for respondents No.1 to 5

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[CORAM : M. T. JOSHI, J.]

DATE : 25th FEBRUARY, 2015

ORAL JUDGMENT:

1. Heard both the sides.
2. Aggrieved by the direction to pay the compensation in a Motor Accident Claim Petition, present appeal is preferred by original respondent No.2 i.e. the insurer of the vehicle involved in the accident.
3. Brief facts of the case are as under -

That on 13th April, 1997, at about 11.00 p.m. in the night, deceased Shamim along with family members was traveling by a private jeep bearing registration No. MH-17, A-3344. According to the original petitioner – claimants, when the jeep was passing on the high way, near village Alegaon, it suffered an accident due to rash and negligent driving of the said vehicle. In the accident, Shamin died and as such, compensation was claimed against the owner i.e. original respondent No.1 and the insurer of the jeep – present appellant, by the legal representatives cum dependents i.e. husband and children of the deceased.
4. Earlier, respondent No.1 did not appear in the proceedings. The learned Tribunal heard and ultimately came to the

conclusion that the present appellant and respondent No.2 – owner are jointly and severally liable to pay the compensation. In the circumstances, first appeal No. 3605 of 2008 was filed by the present appellant in this Court. Vide judgment and order dated 10th December, 2008, this Court came to the conclusion that since the learned Member, MACT did not take into consideration all the available material on record, the matter deserves to be remanded to the Tribunal for fresh consideration. After remand, respondent No.1 – owner of the vehicle also appeared and filed his written statement and placed evidence on record. In short, plea of the present appellant, throughout by denying all the adverse allegations, was that at the time of the accident the private jeep was being used for hire and as there was a breach of terms and conditions of the policy of the insurance, it would not be liable to pay compensation, if any. The concerned police had investigated the accident and after making investigation, the police officials had filed FIR, certified copy of the same was placed on record by the respondent – claimants at Exhibit-40. There is recital in the said FIR that as per the driver of the jeep, it was carrying fair paying passengers, as it was reported by him that he was taking them on “Vardi”. It is an admitted fact that term “Vardi” means on hire. There is no denial

that the vehicle is a private jeep and therefore, no passenger on hire or reward can be carried at the risk of the present insurer. The issue, however, is as to whether the deceased was being carried as a fair paying passenger or a gratuitous passenger.

5. After the remand, the respondent – claimants as well as original respondent No.1 – i.e. owner, came with a case that the family of the deceased and respondent No.1 – owner were on friendly terms and as family of the deceased wanted to visit religious places, the jeep was given *in gratis* to the family only upon filling fuel in the vehicle. While respondent No.1 i.e. original petitioner No.1 in cross examination agreed that the police had carried proper investigation, original respondent No.1 – i.e. the owner submitted that the investigation was not proper and therefore, statement in the FIR made by the police officers that the jeep was being used for hire at the relevant time is not proper.

6. Mr. Gatne, learned advocate for the appellant submits that when there was definite evidence to show that the deceased was being carried as a fair paying passenger in view of the recital in the FIR, the learned Tribunal ought not to have neglected said material on record and given credence to the improved version

of the claimant and original respondent No.1 – owner that the jeep was being plied in gratis.

7. On the other hand, Mr. Bedre, learned advocate for respondents No.1 to 5, original claimants submits that the learned Member of the MACT has appreciated all the evidence on record properly and he found that there is no proof that proper investigation was carried and on the contrary, there was definite evidence from the side of the claimants as well as owner and in the circumstances, he submits that the appeal be dismissed.

8. On the basis of this material, following point arises for my determination.

POINT

- I) Whether the deceased was traveling in the jeep as a fair paying passenger in breach of terms and conditions of the policy?

9. My finding to the same is in negative. The appeal is therefore, dismissed for the reasons to follow:-

REASONS

10. It is no doubt held during earlier round of litigation,

present respondents No.1 to 5 or for that matter, owner of the jeep did not come with a case that the jeep was being used for gratuitous purpose, however after remand, they deposed on the line, as detailed above. It should be noted that in the proceedings under section 166 of the Motor Vehicles Act, strict rules of pleadings are not applicable. The FIR was prepared by the police officer, after making investigation. It is said to be based on the information given by the jeep driver that the jeep was being used on hire. As against this, statements of respondent No.1 i.e. one of the claimants and original respondent No.2 i.e. the owner of the jeep would show that family of the deceased and of the owner of the jeep reside in neighbourhood. The family of the deceased wanted to visit religious places and, therefore, the jeep was lend to the family of the deceased on the condition of only filling of fuel. In this set of circumstances, when during the immediate information given regarding injuries received in the accident, the word "Vardi" is used, whether it meant to be a pure or simple jeep on hire or whether half way through i.e. lending of the jeep on the condition of filling of fuel will have to be considered.

11. Considering all the facts on record and the benevolent provisions of the Motor Vehicles Act, the appreciation of the

evidence will have to be made in favour of respondents No.1 to 5, in such a situation. In the circumstances, there is no defect in the appreciation of evidence by the learned Member, MACT and hence the following order -

ORDER

- I) Appeal is hereby dismissed without any order as to costs.
- II) The amount deposited by the appellant in the present proceedings be transmitted to the concerned Tribunal for onward disbursement, as per rules and orders if any of the concerned Tribunal, after the appeal period is over.

[M. T. JOSHI, J.]