IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

First Appeal No. 1634 of 2015

Bajaj Allianz General Insurance Co. Ltd.,
Through its Branch Manager,
GE Plaza, Airport Road, Yerwada,
Pune, Branch Nanded.

Through its Authorized Signatory /
Branch Manager,
2nd Floor, Adalat Road,
LIC Building, Aurangabad. .. Appellant
(Original respondent no.2)

versus

1. Dnyanoba s/o. Taterao Raut,
Age : 47 years,
Occupation : Barber,
R/o. Taroda,
Taluka & District : Parbhani.

2. Kailash s/o. Marotrao More,
Age : 50 years,
Occupation : Business,
R/o. Bhoi Galli, Parbhani. .. Respondents
(No.1 - Original claimant
&
No.2 - Original respondent no.2)

....

Mr. S.G. Chapalgaonkar, Advocate, for the appellant.

Respondent no.1 served (Absent).

Mr. V.B. Anjanwatikar, Advocate, for respondent no.2.

....

CORAM : A.M. BADAR, J.

DATE : 15TH DECEMBER 2015

ORAL JUDGMENT :

1. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 **[For short, hereinafter referred to as "MV Act"]** by original respondent no.2 - insurer of the motor vehicle bearing registration No. MH-22/N-1854, challenging the judgment and award passed by the Motor Accident Claims Tribunal, Parbhani, on 13th March 2015 in M.A.C.P. No. 507/2010 between the parties. Respondent no.1 Dnyanoba Raut herein is the original claimant. Respondent no.2 Kailash More was original respondent no.1 before the learned Tribunal. He is owner of the motor vehicle bearing registration No. MH-22/N-1854. For the sake of convenience, parties shall be referred to in their original capacity.

2. Facts in nutshell giving rise to the present appeal are thus :

(a) Claimant Dnyanoba lodged a claim for compensation under Section 166 of the MV Act and sought compensation of Rs. 6,00,000/- from respondents on account of permanent disability and injuries suffered by him in the accident which took place because of rash and negligent driving of Ape Truck Plus of 'Piaggio' make owned by respondent no.1 and insured with respondent no.2 at the relevant time. According to the claimant, on 30th May 2010, he was proceeding towards his village from Parali in the said motor vehicle. The driver of that vehicle drove it in rash and negligent manner and gave dash to the cement pole causing the said accident. In the said accident, the claimant suffered severe injuries and he was required to take medical treatment. Because of the accident, he lost his memory as well as control over his body. The accident has caused loss of future income to him. With these averments, he claimed compensation of Rs. 6,00,000/- from respondents.

(b) Respondent no.1 Kailash - owner of the motor vehicle opposed the claim by filing written statement at Exhibit 13. He admitted that this accident has resulted in registration of crime against driver of the said Ape truck. Respondent no.1 denied that the accident happened because of rash and negligent driving of his truck. According to respondent no.1 Kailash, the truck was insured with respondent no.2 - Insurance Company and as such liability to pay compensation needs to be borne by respondent no.2.

(c) Respondent no.2 opposed the claim by filing written statement at Exhibit 17. The Insurance Company admitted the fact of insurance of the said Ape truck at the time of the accident in question. According to the Insurance Company, driver of the said truck was not holding valid and effective driving license. The claimant was travelling in the said vehicle as unauthorized passenger. The Ape truck involved in the accident is a goods carriage vehicle. Risk of such unauthorized passenger is not covered under Section 147 of the MV Act. Respondent no.2 - Insurance Company denied each and every adverse averment made in the petition.

(d) On the basis of rival pleadings, issues were framed and parties went for trial. In order to prove his claim, claimant Dnyanoba adduced evidence on affidavit and he was subjected to cross examination by respondents. He also examined Dr. Sham Agroya in order to prove disability. In rebuttal, respondent no.2 examined its officer Dhanesh Kulkarni.

3. After hearing the parties, by the impugned judgment and award, the learned Tribunal held that the accident in question was caused because of rash and negligent driving of the Ape truck bearing registration No. MH-22/N-1854 owned by respondent no.1 and insured with respondent no.2. The learned Tribunal further held that respondent no.2 - Insurance Company proved that the claimant was travelling in the said vehicle as unauthorized passenger. The compensation payable to the claimant was assessed at Rs. 2,11,000/- and respondents were jointly as well as severally directed to pay compensation. Hence this appeal by the Insurance Company limited to the extent of its liability to pay compensation to the claimant.

4. Heard Shri Chapalgaonkar, the learned Counsel appearing for the appellant - Insurance Company. He submitted that in view of Section 147 of the MV Act, the insurer is not obliged to insure the passengers in goods vehicle. According to the learned Counsel for the appellant, the claimant was travelling in the said goods carriage vehicle either as a gratuitous passenger or fare paying passenger. His risk as such was not covered and therefore the learned Tribunal after giving a finding that the claimant was unauthorized passenger in goods carriage vehicle ought not to have fastened liability on the Insurance Company.

5. As against this, the learned Counsel appearing for respondent

no.2 - owner of the said vehicle submitted that sitting capacity of the vehicle is shown to be two and therefore risk of the claimant was covered under the insurance policy. He therefore submitted that the impugned judgment and award is perfectly legal and correct.

6. None appeared for respondent no.1 - original claimant despite service.

7. Now let us examine whether the learned Tribunal was justified in fastening liability to pay compensation on appellant - original respondent no.2 i.e. Insurance Company. At this juncture, it is apposite to have a look at certificate cum policy schedule by which the Ape truck bearing registration No. MH-22/N-1854 was insured by its owner. This certificate shows that the said motor vehicle is of 'Piaggio' make having open load body. The certificate describes this vehicle as 'Ape Truck Plus' - a commercial vehicle. Sitting capacity of this vehicle is shown to be two. As the certificate of insurance shows that Ape Truck Plus insured by it is having open load body meant for commercial use, it is crystal clear that the said vehicle is goods carriage vehicle meant for carriage of goods. Even the learned Tribunal while giving finding on this aspect came to the conclusion that the motor vehicle involved in the accident was goods vehicle solely constructed for carriage of goods and that the passengers are not allowed to travel in such vehicle. The learned Tribunal has categorically given a finding on Issue No.2 that the claimant was travelling in the said goods vehicle as unauthorized passenger. It is not the case of either of the claimant or respondent no.1 - owner of that vehicle that the claimant was either employee of the owner of the vehicle or that he was

travelling in that goods vehicle as owner of goods or representative of owner of goods being transported in the said vehicle. From cross examination of the claimant, it becomes clear that after attending the marriage ceremony at Parali, the claimant was going back to his village Taroda and for undertaking this return journey he boarded the goods vehicle.

8. Section 146 of the MV Act mandates that each and every motor vehicle should be insured and Section 147 states about requirement of policies and limits of liability. It reads thus :-

> " **Requirements of policies and limits of liability.** – (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which –
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) –
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :
>
> Provided that a policy shall not be required –
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the kpolicy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act,

1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee –

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) to cover any contractual liability.

Explanation. – For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely :–

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a third party, a limit of rupees six thousand :

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made

thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons. ”

9. Bare perusal of provisions of Section 147 of the MV Act makes it clear that owner of the goods vehicle is not statutorily liable to get his goods vehicle insured for any passenger travelling in that vehicle. In the case in hand also policy of insurance does not show that risk of any gratuitous or fare paying passenger was covered. Such passengers cannot be permitted to travel in the goods carriage vehicle. At this juncture, it is apposite to quote observations of the Hon'ble Apex Court in the case of ***Smt. Thokchom Ongoi Sangeeta and another Vs. Oriental Insurance Co. Ltd. & others***, reported in ***2007 AIR SCW 6665***, in paras 9 and 10. They read thus :-

"9. The difference in the language of "goods vehicle" as appearing in the Old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the Old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the "carriage of goods". Carrying of passengers in a goods carriage is not contemplated in the Act. There is no provision similar to clause (ii) of the proviso appended to Section 95 of the Old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage".

10. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor. "

10. Similar are the observations of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Prema Devi & others***, reported in ***2008 AIR SCW 2023***. In paras 13, 14 and 15 of the said judgment, it is observed thus :-

" 13. The difference in the language of "goods vehicle" as appear in the old Act and "goods carriage" in the Act is of significance. A bare reading of the provisions makes it clear that the legislative intent was to prohibit goods vehicle from carrying any passenger. This is clear from the expression "in addition to passengers" as contained in definition of "goods vehicle" in the old Act. The position becomes further clear because the expression used is "goods carriage" is solely for the carriage of goods. Carrying of

> passengers in a goods carriage is not contemplated in the Act. There is no provision similar to Clause (ii) of the proviso appended to Section 95 of the old Act prescribing requirement of insurance policy. Even Section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it further clear that compulsory coverage in respect of driversw and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923 (in short "WC Act"). There is no reference to any passenger in "goods carriage".
>
> 14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.
>
> 15. Our view gets support from a recent decision of a three-Judge Bench of this Court in *New India Assurance Company Limited Vs. Asha Rani and others (2002(8) Supreme 594)* in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award. "

11. Having held that the claimant was travelling unauthorizedly in goods carriage vehicle, the learned Tribunal was not justified in fastening the liability to pay compensation on appellant - original respondent no.2 i.e. Insurance Company. No reasons are assigned for taking such course of action taken by the learned Tribunal. The same is wholly unjustified and as such the appeal needs to be allowed with the

following order :-

ORDER

(a) The Appeal is allowed.

(b) The impugned judgment and award so far as it directs appellant - original respondent no.2 to pay compensation to respondent no.1 - original claimant is quashed and set aside. Amount, if any, deposited by the appellant - Insurance Company be refunded to it.

12. The Appeal stands disposed of in the aforesaid terms with no order as to costs.

(A.M. BADAR)
JUDGE

....

puranik / FA1634.15