IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO.413 OF 2010

Uddhav s/o Raghunath Khedkar ... **Appellant**
Age:Major,Occupation:Owner of Vehicle
R/o Tintarwani Tq. Shirur Kasar
District Beed.

VERSUS

1. Meena w/o Bandu Kolekar
   Age 19 years, Occu: Household
   R/o Shingarwadi,
   Tal. Shirur Kasar, Dist. Beed.

2. Babasaheb s/o Janu Kolekar ... **Respondents**
   Age 52 years, Occu: Agri.
   R/o As above.

3. Dropadabai w/o Babasaheb Kolekar
   Age 49 years, Occu: Household
   R/o As above.

4. Mr. Ganesh s/o Ankushrao Gavate
   Age : Major, Occu: Driver
   R/o Tandla, Tq. Georai,
   District Beed.

5. The United India Insurance Co.Ltd
   (Summons to be served on Branch
   Manager,
   Branch Office: Chatrapati Sankul,
   1st Floor, Subhash Road, Beed.

Mr. S. S. Chapalgaonkar Advocate for appellant.
Mr. K. B. Jadhavar, Advocate for respondent No.5
Mr. V. R. Mundada, Advocate for respondent Nos.1 to 3

CORAM : A. M. BADAR, J.

DATE : 18th November, 2015

ORAL JUDGMENT :

. This is an appeal by the original respondent No.1/owner of the offending vehicle, challenging judgment and award dated 09.10.2009 passed by the learned Member of Motor Accident Claim Tribunal, Beed in MACP No. 260 of 2005, whereby claim petition filed by the present respondents 1 to 3 came to be allowed partly by granting compensation of Rs.4 lakhs on account of death of Bandu Kolekar in the vehicular accident. Respondent No.4 herein was respondent No.2 and respondent No.5 herein was respondent No.3 before the trial Court. For the sake of convenience, the parties shall be referred to in their original capacity.

The appellant/original respondent No.1 seems to be aggrieved by the judgment and award of the learned Member, Motor Accident Claim Tribunal, Beed which directed that liability of respondent Insurance company shall be limited to Rs. 1 lakh only and present appellant and driver were made jointly and severally liable to pay rest of the amount i.e. Rs.3 lakhs to present respondents 1, 2 and 3/original claimants.

2. Facts, leading to the institution of the present proceeding can be summarized thus:

i. Claim under section 166 of the Motor Vehicles Act, 1988 came to be filed by wife and parents of deceased Bandu Kolekar with averment that while travelling in Mahindra Martial Jeep, bearing registration No.MH-23-E-3451, Bandu Kolekar died accidental death, caused because of rash and negligent driving of the said jeep by respondent no.2- Ganesh Gawate. Claim of Rs.5 lakhs towards compensation on account of death of Bandu Kolekar was made. It was contended that deceased Bandu Kolekar was an agriculturist he was also running tea stall and as such having income of Rs.6,000/- per month.

ii. Claim petition was opposed by filing written statement by respondent No.3 Insurance Company, contending that insurance policy is not confirmed. Driver of the offending vehicle was not holding valid and effective driving licence. Vehicle was not used for the purpose for which it was registered. Deceased was not third party. Above 10 persons were travelling as passenger in the said vehicle and as such it is not liable to pay compensation. It was further contended that liability of respondent Insurance Company is limited in series of claims arising out of such accident.

iii. Respondents 1 and 2 failed to filed written Statements.

iv. On the basis of rival pleadings, issues were framed and parties went for trial.

v. Claimants examined Claimant No.2 Babasaheb Kolekar. On behalf of Insurance Company, Ganesh Vitthalrao Gujar, Branch Manager came to be examined at Exh.54. He proved private car package policy of Mahindra Martial Jeep in which deceased Bandu Kolekar was travelling at the time of accident.

vi. After hearing the parties, by the impugned judgment and award, the learned Member of the Tribunal was pleased to allow the petition partly and held that liability of insurance company was limited to Rs. 1 lakh as deceased Bandu Kolekar was occupant in the Mahindra Martial Jeep. Therefore, out of the total amount of compensation of Rs.4 lakhs, the Insurance Company was made liable to pay Rs.1 lakh and liability to pay rest of the compensation was saddled on appellant owner as well as driver of the offending vehicle.

3. Heard Shri Chapalgaonkar, learned counsel for the appellant. He drew my attention to the evidence of Ganesh Gujar, Branch Manager of the Insurance Company as well as Insurance policy at Exh.67 and contended that as the policy was a package policy also called as comprehensive policy, liability of the Insurance Company is unlimited. He submitted that special premium was charged and received by the Insurance Company for risk of occupant in the vehicle involved in the accident. Therefore, in the submission of learned counsel for appellant, award needs to be suitably modified by making Insurance Company liable to pay entire amount of compensation awarded by the Tribunal.

4. Learned counsel appearing for respondent Insurance company did not dispute the fact that the policy of insurance was a package policy and risk of occupant in the vehicle involved in the accident was covered.

5. None appears for the other respondents to argue the appeal.

6. With the assistance of learned counsel appearing for the parties, I have carefully perused the evidence adduced on record as well as insurance policy at Exh.57/C.

7. Undisputedly, Mahindra Martial Jeep in which deceased Bandu Kolekar was travelling was insured and contract of insurance was covering the date on which the accident had happened. Insurance policy at Exh.57/C is not "act only" policy but it is package policy covering risk of third party as well as occupant in the vehicle. Relying on schedule of premium found in the said policy which states that liability of insurance company shall be limited to the extent of Rs.1 lakh for nine unnamed passengers in jeep, the Learned Member of the Tribunal restricted liability of respondent No.3 Insurance company to Rs.1 lakh only and rest of the amount under the award was directed to be paid by owner as well as driver of the vehicle.

8. The question as to whether comprehensive/package policy covers risk of death or injury of a pillion rider of two wheeler or the occupants in a private car and what is the extent of liability of the Insurance Company under such policy was examined by the Delhi High Court

in the case of **Yashpal Luthra and another Vs. United India Insurance Co. Ltd. & another, reported in 2011 ACJ 1415.** In that case, evidence of competent authority of Tariff Advisory Committee (TAC) and Insurance Regulatory & Development Authority(IRDA) was recorded. Circulars issued by IRDA were considered. Ultimately, it was held that comprehensive/package policy of two wheeler covers risk of pillion rider and comprehensive/ package policy of a private car covers occupants in a car. It was further held that where vehicle is covered under the comprehensive/package policy, there is no need for Motor Accident Claim Tribunal to go into question whether the Insurance Company is liable to compensate for injury of pillion rider of two wheeler or occupant in a private car. This judgment of Delhi High Court was followed by the learned Single Judge of this Court (Aurangabad Bench) in First Appeal No. 2057/2010 in the case of Popat Kacharu Kedar Vs. Smt. Jyoti w/o Santosh Kedar and others, decided on 11th August, 2011. Relying on judgment of the Delhi High Court, the learned Single Judge has held that there can be a little doubt as regards limits of liability under comprehensive/package policy to compensate in the event of occurrence of death or sustenance of injury to a pillion rider on two wheeler or occupant in a car. In that matter the insurance company was held liable for reimbursement of claimant in its entirety.

9. The Apex Court, in the matter of **National Insurance Company Ltd. Vs. Balkrushna & another, reported 2013 AIR (SC) 473**, noted the ratio of the judgment in the matter of Yashpal Luthra (supra) and held that there is no scintilla of doubt that comprehensive/package policy would cover liability of the insurance company for payment of compensation for the occupant in a car.

10. In view this of the settled position of law, the impugned award limiting liability of respondent No.3 Insurance Company to the extent of Rs.1 lakh cannot be justified. No further grounds were pressed into service by the appellant. In the result, the appeal deserves to be allowed and as such, it is allowed.

11. The impugned judgment and award dated 08.10.2009 in MACP No. 260 of 2005 passed by the learned Member, Motor Accident Claim Tribunal is modified so far as it limits liability of Insurance company to Rs.1 lakh.

12. It is directed that original respondents 1 to 3

shall jointly as well as severally pay the entire amount of compensation to the claimants.

13. Rest of the award of the learned Member, Motor Accident Claim Tribunal, Beed including mode or manner of payment of compensation is maintained.

14. First appeal is accordingly disposed of.

(A. M. BADAR, J.)

JPC