IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

SECOND APPEAL NO. 107 OF 1992

Sk. Shaukat s/o. Sk. Osman,
Age Major, Occu. Business,
R/o. Shekta, Taluka and
Dist. Aurangabad. **....Appellant.**
(Ori. Plaintiff)

Versus

1. The Oriental Insurance Co. Ltd.,
through its Divisional Manager
Shri. Sorabjee s/o. Nosherwan
Jalnawala, Adalat Road, A'bad.

2. Divisional Manager,
New India Insurance Company,
Adalat Road, Aurangabad. **....Respondents.**

Mr. A.P. Bhandari, Advocate for appellant.

Mr. A.A. Joshi, Advocate for respondent No. 1.

CORAM : T.V. NALAWADE, J.
DATED : 20th June, 2016.

JUDGMENT :

1) The appeal is filed to challenge the judgment and decree of 2nd Additional District Judge, Aurangabad delivered in Regular Civil Appeal No. 49/1989. The appeal was filed by present Insurance Company of the vehicle of the plaintiff against judgment and decree of Regular Civil Suit No. 719/1985, which was pending in the Court of Civil Judge, Junior Division, Aurangabad.

2) The suit was filed for compensation in respect of damage caused to the vehicle of plaintiff in motor vehicle accident and the Trial Court had decreed the claim of Rs. 17,000/- with interest and future interest at the rate of 12% p.a. was also given. This decision is set aside by the First Appellate Court. Heard the learned counsels for both the sides.

3) Plaintiff is owner of one pick up truck bearing No. MHB/6752 and it was of 1976 model. This truck was insured with present respondent Oriental Insurance Company. Though New India Insurance Company, the insurance company of other vehicle was also made defendant, no decree was given against New India Insurance Company and so, that case need not be considered.

4) The accident took place on 23.6.1982. It is contended that the truck of plaintiff was damaged in accident and he was required to spend Rs. 17,000/- on repairs. Only on that count, the compensation was claimed from the Insurance Company of the truck.

5) Oriental Insurance Company filed written statement

and contested the matter. The fact of insurance was admitted, but other contentions were denied. It was contended that when surveyor was appointed to make the assessment of the damage, the plaintiff was asked to produce the record like fitness certificate and permit, but such record was not produced. It is contended that on the date of accident, the permit had expired and plaintiff never produced fitness certificate before Insurance Company. It is contended that in view of these circumstances, there was breach of terms and conditions of the policy and so, plaintiff is not entitled to get the compensation.

6) This Court admitted the appeal on 3.3.1992, but it appears that substantial questions of law were not formulated. During arguments, it was made clear to both the sides that following substantial question of law is involved in the matter.

(i) Whether the Insurance Company has produced the material on the record on the basis of which inference is possible that the plaintiff had committed breach of terms and conditions of the contract and due to that, plaintiff is not entitled to get compensation ?

7) Before the Trial Court, plaintiff examined himself and he gave evidence as per aforesaid contentions. He was cross

examined by the learned counsel for defendant No. 1, Oriental Insurance Company, but it was not specifically suggested to plaintiff that the vehicle was not fit or that there was no fitness certificate and there was no transport permit issued by R.T.O. Plaintiff examined one Motor Vehicle Inspector Shri. Jadhav. He was working in the concerned R.T.O. Office from 1977 to 1984 as Assistant Motor Vehicle Inspector. One Shri. Dhupavkar was working as Motor Vehicle Inspector, who is required to inspect the vehicle and issue fitness certificate. In his evidence, a copy of fitness certificate is proved as Exh. 54. The witness has identified the signature of aforesaid Officer. The record of payment of fees for getting road permit is also proved and the receipts in respect of payment of charges are proved. This record is at Exhs. 52 to 61.

8) The fitness certificate at Exh. 54 was for the period from 9.8.1981 to 8.8.1982, though it was issued on 30.9.1982, after the date of accident. Rule 45 of the Maharashtra Motor Vehicle Rules show that can be issued even after expiry of previous certificate of fitness and record must have been seen by police after accident. Copy of application given for issuing duplicate certificate of fitness is brought on the record and it shows that in the year 1987, for the purpose of suit, plaintiff

again applied for getting a copy as he had lost the record. As per the record, there was valid registration of the vehicle and it is not disputed now that there was permit for the vehicle at the relevant time. Much was argued by the learned counsel for Insurance Company on circumstance that the certificate of fitness is not in the format given in the Motor Vehicle Act. It was submitted that the record was created subsequent to the accident. Even if this circumstance is accepted as it is, there is another circumstance against the Insurance Company like existence of valid permit which is at Exh. 57. This permit was issued in April 1982 when the accident took place in June 1982. It was valid up to year 1988. It can be said that at the time of issuing permit also, the owner is required to satisfy some conditions, which are mentioned in permit itself and for that, the vehicle was inspected by R.T.O. Office. Section 158 of Motor Vehicle Act r/w. Rule 45 of Maharashtra Motor Vehicle Rules show the procedure for inspection when accident takes place. Further steps like cancellation also can be taken. No such steps are taken against the plaintiff.

9) One Officer is examined by the Insurance Company and he has given evidence that plaintiff has not produced the fitness certificate. Some correspondence is produced at Exh. 72

to show that Insurance Company had asked the owner to produce such record. He admits that except the fitness certificate other record was produced in the office of Insurance Company. Suggestion was given to him that original fitness certificate was also produced, but this suggestion was denied.

10) The learned counsel for plaintiff, appellant placed reliance on some cases of different High Courts, which are as under :-

(i) MFA No. 4428/2013 [Between The Branch Manager National Insurance Company Ltd. Vs. H.D. Channadevaiah and Ors.] dated 25th June 2014 KARNATAKA HIGH COURT,

(ii) MFA No. 7958/2010 [MV] [Between M/s. Iffco Tokio General Insurance Company Ltd. Vs. Sri K. Krishanan and Ors] dated 14th June 2012, KARNATAKA HIGH COURT and

(iii) Decision of Gujarat High Court dated 23rd August 1991 [Between Alam Yasin Mirza Vs. V.K. Makwana and Ors.].

The learned counsel for appellant submitted that when the contract of Insurance was admitted, the burden was on the Insurance Company to prove that there was a particular condition and due to breach of that condition, the Insurance Company cannot be held liable to pay the compensation. The learned counsel submitted on the basis of observations made in the aforesaid three cases that when Insurance Company accepts premium from customer, it is duty of Insurance Company to ascertain that the record which should be there for showing compliance of the provisions of Motor Vehicle Act was there and only after that the Insurance Company is expected to enter in to the contract. He submitted that when Insurance Company accepts the premium, then the defences which are available to Insurance Company are only the defences under section 96 of the Motor Vehicle Act, 1988 and no other defence is available to Insurance Company. There is no force in this submission. Plaintiff is not that party and so, the relevant provision of Motor Vehicle Act cannot be used in the present case.

11) In the result, the appeal is allowed. Judgment and decree of First Appellate Court is set aside and judgment and decree of Trial Court is hereby restored.

[T.V. NALAWADE, J.]

ssc/