

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.799 OF 2014

Amjad Asifoddin Kazi,
Ag: 24 yrs., occu. Service,
R/o Bodh Vardhini School,
Jogai Wadi, Tq. Ambajogai,
District Beed.

= **APPELLANT**
(Orig. Claimant)

VERSUS

1) Salauddin Rasuloddin Sayyed
Age:Major, occu.Business.
R/o Gandhi Nagar, Ambajogai,
District Beed.
(Owner of Travel Bus)

2) The New India Assurance Co.
Ltd. Through its
Branch Manager,
Opp. Shahu College, Latur.

= **RESPONDENTS**

Mr.Vivek V.Bhavthankar, Advocate for Appellant;

Respondent No.1 served;

Mr.MM Ambhore, Advocate for Respondent No.2.

CORAM : P.R.BORA, J.

DATE : 29th August, 2016.

ORAL JUDGMENT:

1) Heard. Admit. By consent of the learned
Counsel appearing for the parties, taken up for
final disposal. The appellant has filed the

present appeal against the Judgment and Order passed by the Motor Accident Claims Tribunal, Latur (for short, the Tribunal) in MACP No. 270/2009 decided on 23rd October, 2013.

2) The aforesaid claim petition was filed by the appellant seeking compensation on account of the injuries sustained by him in a vehicular accident having involvement of a school bus bearing Registration No. MH-01-5888 insured with Respondent No.2-insurance company.

3) The Tribunal has awarded the compensation amounting to Rs.1,25,915/- to the appellant from Respondent No.1 i.e. owner of the school bus and has exonerated the insurance company from its liability and has dismissed the claim as against the insurance company. The present appeal is filed challenging the dismissal of the petition against the insurance company.

4) Shri Bhavthankar, learned Counsel appearing for the appellant, submitted that for

proving the liability of the owner as well as the insurance company, the appellant has adduced sufficient and cogent evidence on record. The learned Counsel submitted that Deputy RTO was examined by the appellant and in his evidence the Deputy RTO has stated that the offending vehicle was permitted to be used for carrying the passengers since commercial tax was recovered from the said vehicle.

. The learned Counsel further submitted that in the other claim petitions filed by some other claimants, arising out of the same accident, which were decided by the other Member of the Tribunal, the insurance company has been held liable jointly and severally along with the owner of the vehicle to pay the amount of compensation to the respective claimants in the said claim petitions and the insurance company has not preferred any appeal against the said decision; on the contrary, has satisfied the Award passed in the said matter.

5) The appellant has placed on record a copy of one of such judgments in MACP No.10 of 2009 decided on 24th February, 2010. The learned Counsel submitted that the Tribunal has grossly erred in the present matter in exonerating the insurance company from its liability on some erroneous reasons. The learned Counsel submitted that the evidence on record, more particularly as regards to the commercial use of the vehicle, has not been considered by the Tribunal, which has resulted in passing the incorrect order. The learned Counsel, therefore, prayed for holding the insurance company also liable for payment of compensation along with the owner of the school bus and accordingly to modify the impugned Award.

6) Respondent No.1 though has been duly served, has not entered his appearance.

7) Shri Ambhore, learned Counsel appearing for the insurance company, supported the impugned judgment and inviting my attention to the

discussion made by the Tribunal in Para 33 thereof, submitted that the Tribunal has rightly exonerated the insurance company from its liability. The learned Counsel submitted that the insurance company has also adduced the evidence in the matter and has examined an official from the RTO office so as to bring on record that the offending vehicle could not have been used for carrying the passengers and carrying of the passengers in the said bus amounted to breach of policy conditions. The learned Counsel, therefore, prayed for dismissal of the appeal.

8) I have considered the submissions advanced on behalf of the respective parties. I have also perused the impugned judgment and the record of the case and more particularly the evidence adduced in the matter. The appellant had examined one Rajabhau Trimbak Jine, as his witness, who was, at the relevant time, working as Deputy RTO at Latur and was In-charge of

Deputy RTO at Ambejogai. The said witness has deposed that the road tax of Rs.7,424/- was received to the office of Dy. RTO, Ambejogai. The said witness has further deposed that the road tax, as aforesaid, was levied for the commercial use of the offending vehicle. In the cross-examination, the said witness has, however, admitted that the permit for operating the aforesaid bus was restricted for carrying the students in Ambejogai city. The said witness has further admitted that the passengers could not have been carried from Latur to Ambejogai in the said mini bus.

9) The insurance company has also examined a Junior Clerk from the office of Deputy RTO, at Ambejogai in order to substantiate the defence taken by it. During the course of his evidence the said junior clerk, viz. Chandralok Suryabhan Waghmare, produced an extract of registration particulars of the offending bus (Exhibit-46). The said witness in his cross-examination on

behalf of the claimants, admitted that at the relevant time, different amounts of tax were prescribed by the Government, based on the type of the vehicle. The said witness has further admitted that the owner of the offending school bus had paid the tax of Rs.11,140/- on 28th August, 2008 for the next three months. The said witness has further admitted that he was unable to tell as to how much tax at the material time was being levied for the public service vehicles and for contract carriage vehicle.

10) After having gone through the evidence of aforesaid two witnesses, it appears to me that the learned Tribunal has failed in properly appreciating the evidence so brought on record. Though it was the case of the insurance company that at the relevant time, the said bus was being used for carrying the students and was only permitted to be used as a school bus, the evidence on record appears short in establishing the said fact.

11) The learned Counsel appearing for the appellant, i.e. original claimants, has today tendered across the Bar a copy of the Insurance policy along with the documents, which contain the copy of permit in respect of the offending bus bearing Registration No. MH-01-H-5388. The same is taken on record and marked as "X" for identification. The validity of the said permit was for the period starting from 30th May, 2008 to 29th May, 2013. The aforesaid permit bears an endorsement that the said permit was for use of the said vehicle to carry the passengers on hire.

. In the document at Exhibit-46, the said permit is referred to in the registration particulars. Moreover, the evidence of the Dy. RTO as well as the Jr. Clerk from the office of RTO also support the case of the appellant that there was no bar at the relevant time for carrying the passengers through the said mini bus. As has been deposed by the Deputy RTO, for school bus, there was exemption in payment of road taxes. However, from the evidence on

record, it is clear that no such exemption was availed in the present case by the owner of the school bus. On the contrary, the evidence on record shows that the owner of the bus had paid the taxes for contract carriage vehicle.

12) It has come in the evidence of the witness examined by the insurance company that on 28th August, 2008, tax of Rs. 11,140/- was paid by the owner of the bus and the said tax was paid for next three months. Though it was sought to be canvassed by Shri Ambhore, learned Counsel for the insurance company, that the tax was not covering the period of the accident, the contention so raised is not liable to be accepted. The accident had admittedly taken place on 7th November, 2008; whereas the tax was paid for the period starting from 28th August, 2008 for next three months i.e. up to 28th November, 2008. The period of the accident has been thus squarely covered and the owner of the bus had paid the tax of the said period also.

13) There is no cogent and sufficient evidence establishing the defence raised by the insurance company that the owner of the bus has committed breach of the policy conditions by using the offending vehicle for the purpose not permitted for. The learned Tribunal has not considered the entire evidence on record and merely relying on some admissions given by the Dy.RTO in his cross-examination, has recorded a finding that the breach of policy condition was committed by the owner of the bus and has accordingly exonerated the insurance company from its liability to pay the compensation or to indemnify the insured.

14) Further, it is more material to take note of the fact that in the other claim petitions arising out of the same accident, another Member of the Tribunal has held the insurance company liable jointly and severally along with the owner for payment of compensation to the petitioners in the said claim petitions.

The learned Counsel for the insurance company has not disputed the fact that the Awards passed in the said claim petitions have been satisfied by the insurance company.

15) Having considered the entire material on record, it appears to me that the learned Tribunal has committed an error in exonerating the insurance company from its liability. From the evidence available on record, the appellant has sufficiently established that the offending school bus was being permitted to use for carrying the passengers on hire. In the circumstances, I am inclined to allow the present appeal. Hence, the following order, -

ORDER

i) Respondent No.2 - Insurance Company is jointly and severally held liable along with owner of the offending vehicle, to pay the amount of compensation, as awarded by the Tribunal, to the appellants;

ii) The other part of the impugned Award is maintained as it is;

15. The appeal is allowed in the aforesaid terms. Pending Civil Application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/