

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.361 of 2015

Bajaj allianz General Insurance co.Ltd.,
Through it's Branch Manager / Authorized
Signatory, UnityPlaza, First Floor,
Above At & T World, Mumbai Naka,
Nashik.

2nd Floor, Rajendra Chamber,
Adalat Road, Aurangabad.

...APPELLANT
(Orig.Resp.No.2)

VERSUS

1. Annasaheb s/o Ramdas Shedale,
Age 53 years, Occu. Agri.,
2. Sou.Heerabai w/o Annasaheb Shedale,
Age 48 years, Occu: Household,
3. Sachin s/o Annasaheb Shedale,
Age 25 years, Occu: Agri.

All R/o. Fattayabad Tq.Shrirampur,
Dist. Ahmednagar.

4. Bhanudas s/o Baban Labade,
Age Major Occ: Business
r/o. Fattyabad Tq. Shrirampur,
Dist. Ahmednagar.

...RESPONDENTS
(Rspdt Nos. 1 to 3 -Org.Claimants)
Rspdt No.4 - Org.Rspdt No.1)

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Shri Mohit Deshmukh, Adv., h/f Shri
S.G.Chapalgaonkar, Adv., for appellant.
Shri S.D.Tanpure, Adv., for respondent nos. 1 to
3.

Shri N.C.Garud, Adv. for respondent no.4.

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CORAM: P.R.BORA, J.

Date of reserving the judgment: 30/3/2016

Date of pronouncing judgment: 2/5/2016

JUDGMENT:

1. By filing the present appeal, the appellant Insurance Company (Original respondent No.2) has questioned correctness and legality of the judgment and order passed in M.A.C.P. No.338 of 2006 on 31st of August, 2014 by the Member, Motor Accident Claims Tribunal, Shrirampur.

2. The present respondent nos. 1 to 3 had filed the aforesaid claim petition claiming compensation of Rs.6,00,000/- (Rs. six lacs) on account of death of one Sandip Annasaheb Shedale who died in a motor accident happened on 10.6.2006 having involvement of an Ape Rickshaw bearing registration No.MH-17-T-5495 owned by respondent no.4 herein and insured with the present appellant. Respondent nos. 1 and 2 are

the parents of deceased Sandip whereas respondent no.3 is the brother of deceased Sandip. Respondent nos. 1 to 3 are here-in-after referred to as the original claimants.

3. It was the contention of the original claimants before the Tribunal that the alleged accident happened because of rash and negligent driving of the driver of the offending Ape Rickshaw through which deceased Sandip was travelling at the relevant time. As stated in the petition, deceased Sandip was aged about 23 years on the date of the accident and was earning Rs.5,000/- per month out of his employment in one Company at Chinchwad.

4. The claim petition was resisted by the appellant Insurance Company. It was the contention of the Insurance Company that on the date of the accident, the owner of the offending vehicle was not possessing any valid permit to ply the said vehicle on the road. It was also contended by the Insurance Company that the

driver of the offending Rickshaw was not holding a valid and effective driving license on the date of the accident. The Insurance Company has also raised an objection for not impleading the driver of the Ape Rickshaw as the respondent. The income of the deceased was also disputed by the Insurance Company. Learned Tribunal, however, on the basis of the oral and documentary evidence brought before him partly allowed the petition and directed the owner and insurer of the offending tempo i.e. original respondent nos. 1 and 2 to pay the compensation of Rs.5,00,000/- (Rs. five lacs) inclusive of the amount of no fault liability compensation to the claimant along with the interest at the rate of 9 per cent per annum from the date of institution of the petition till its realization. Aggrieved by the said judgment, the Insurance Company has filed the present appeal.

5. Shri Mohit Deshmukh, learned Counsel appearing on behalf of the petitioner, submitted that though the Insurance Company had raised a

specific objection that the owner of the Ape Rickshaw had committed breach of the policy condition by plying the Ape Rickshaw without any valid permit therefor, and has also proved the said objection, the learned Tribunal has recorded an erroneous and incorrect finding that there was no breach of Insurance policy. The learned Counsel further submitted that the Tribunal has erroneously observed that the permit can be got renewed by paying the penalties in the R.T.O. Office and, consequently, has reached to the erroneous conclusion that there was no breach of the policy condition. Learned Counsel further submitted that the Tribunal has failed in properly appreciating the law laid down in the judgment relied upon by the appellant Insurance Company. Learned Counsel submitted that the Tribunal has wrongly held that the law laid down in **National Insurance Company Ltd. vs. Challa Bharathamma and others (2004 ACJ 2094)** favours the case of the claimants and not the respondents. Learned Counsel further submitted that the Tribunal has grossly erred in

determining the amount of compensation. It was argued that since the deceased was a bachelor, one half of his income must have been held to be his personal expenses and the dependency of the parents ought to have been decided on the basis of half of his balance income whereas the Tribunal has deducted only one third of the income of the deceased towards his personal expenses and has accordingly assessed the compensation. Learned Counsel submitted that in view of the fact that the Insurance Company has duly proved that the owner of the offending Ape Rickshaw has committed breach of the policy condition, the learned Tribunal ought to have dismissed the claim against the Insurance Company. Learned Counsel, therefore, prayed for allowing the present appeal and to set aside the impugned judgment and award passed against the appellant Insurance Company.

6. Learned Counsel appearing for the claimants has supported the impugned judgment and award. Learned Counsel Mr. N.C.Garud, appearing

for respondent no.4 opposed the submissions advanced on behalf of the appellant Insurance Company. Learned Counsel submitted that it was not the case that the offending Ape Rickshaw was never holding any permit. It was further contended by him that the Ape Rickshaw was having a valid permit till 17.4.2006 but it was not renewed till the date of the accident. Learned Counsel submitted that in the case of **Challa Bharathamma and others** (cited supra), relied upon by the appellant Insurance Company, there was no permit at all and, as such, the decision in the said case cannot be applied to the facts of the present case. Referring to the provisions of Section 81 of the Motor Vehicles Act, the learned Counsel submitted that the delay in making the renewal application can also be condoned by the authorities and where the permit gets renewed after expiry of the period thereof, such renewal shall take the effect from the date of such expiry. Learned Counsel submitted that in view of such provision, the Tribunal has correctly rejected the objection of the appellant

Insurance Company that there was a breach of policy condition. Learned Counsel, therefore, prayed for dismissal of the appeal.

7. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and record of the case.

8. The Insurance Company, in its written statement filed before the Tribunal had raised a specific objection that the APE Rickshaw involved in the alleged accident was not holding a valid permit to ply the same on the road on the date of the accident i.e. 10th of June, 2006. On that count, the Insurance Company had denied its liability to indemnify the insured. According to the Insurance Company, it was a breach of policy condition.

9. In view of the plea raised by the Insurance Company in its written statement, the

learned Tribunal had also framed an issue whether there was any breach of Insurance policy. The Tribunal has, however, recorded a negative finding on the said issue. In paragraph no.22 of the impugned judgment, the Tribunal has referred to the document at Exh.36 which is permit of the offending APE Rickshaw. The Tribunal has observed that the permit of the APE Rickshaw, to ply it on road, was expired on 17.4.2006. The Tribunal has, however, not recorded any specific finding whether not holding of the valid permit for the offending Rickshaw on the date of the accident would amount to breach of terms and conditions of the Insurance policy and whether, for that reason, the Insurance Company was liable to be exonerated from its liability to indemnify the insured.

10. Though against the issue No.3 framed as 'Whether there is any breach of Insurance policy ?', the Tribunal has recorded a negative finding, there is little discussion on what ground it had arrived at the conclusion that

there was no breach of policy condition. From the discussion made by the learned Tribunal in paragraph no.24 of the impugned judgment, it can be gathered that the Tribunal was of the view that when the Insurance policy was in force and the driver of the offending APE Rickshaw was holding valid driving license to ply the same, the breach of policy condition cannot be said to be committed by the insured merely on the ground that the permit of the APE Rickshaw was not renewed. The Tribunal has further observed that the permit can be got renewed by paying the penalties in the R.T.O. Office.

11. The observations made as above and the conclusion arrived at by the learned Tribunal are apparently erroneous and against the law laid down by the Honourable Apex Court in the case of **National Insurance Ltd. Vs. Challa Bharathamma and others** (cited supra). The aforesaid judgment was heavily relied upon by the Insurance Company. From the discussion made by the Tribunal, it appears that the

Tribunal has failed in appreciating the import of the said judgment and the ratio laid down in the said judgment. The Honourable Apex Court in the aforesaid judgment has categorically held that, "plying of a vehicle without a valid permit amounts to infraction of law". The Honourable Apex Court has further held that under Section 149 (2) of the Motor Vehicles Act, the defense that the insured plied the vehicle without valid permit and thereby committed breach of policy condition is well available for the Insurance Company to deny its liability to indemnify the insured. The Honourable Apex Court has further observed that the Insurance policy being operative during the relevant period, had no relevance in deciding the issue regarding the liability.

12. In view of the law laid down as above, it was not open for the learned Tribunal to record a contrary finding.

13. In the impugned judgment, the learned Tribunal has discussed the following judgments:

- 1) 2004 ACJ 2094 SC
(National Insurance Co. Ltd
vs
Chella Bharathamma & Ors)
- 2) 2013 ACJ 935 BOMBAY
(Oriental Insurance Co. Ltd.
V
Suhas & Ors)
- 3) 2009 (1) AIR Bombay R-43 (SC)
(National Insurance Co.Ltd.
versus
Vidhyadhar Mahariwala & others)

I am constrained to observe that the Tribunal has utterly failed in understanding and appreciating the ratio laid down in all the aforesaid judgments. In the case of **Challa Bharathamma and others** (cited supra), as I have mentioned here-in-before, the Honourable Apex Court has categorically held that plying of a vehicle without a valid permit amounts to infraction of law. In the said matter, a specific issue was raised before the Honourable Apex Court whether the Insurance Company would be liable if the insured had not obtained the permit to ply the vehicle and the Honourable Apex Court has answered the said issue in negative. The fact apart that the Honourable Apex Court has further

directed the Insurance Company to deposit the amount at the first instance and recover the same from the insured by initiating proceedings before the executing Court without filing any separate suit therefor. In no case it can be said that the observations made and the conclusion recorded by the Honourable Apex Court in the aforesaid case are against the plea taken by the Insurance company. The observations made in this regard in para 27 of the impugned judgment are wholly incorrect and unsustainable.

14. In the case of **Oriental Insurance Company Vs. Suhas** (cited supra), this Court has affirmed the finding recorded by the Tribunal that there was breach of policy condition as the Driver of the offending vehicle was not holding a valid license. This Court has further held that the Tribunal was justified in directing the Insurance Company to pay compensation and then recover the said amount from the owner of the offending vehicle. It is evident that the aforesaid judgment also cannot be said to be in

any way dis-favouring the case of the Insurance Company.

15. In **National Insurance Company Vs. Vidyadhar**, cited supra, the Honourable Apex Court has held that the Insurance Company was exonerated from its liability to indemnify the insured as the driving license of the driver of the offending vehicle was not in force on the date of the accident. It is surprising that inspite of the aforesaid three judgments on record, the learned Tribunal has recorded a negative finding on the issue whether there is any breach of insurance policy. In view of the law laid down in all the aforesaid judgments discussed hereinabove, the finding as recorded by the learned Tribunal on the issue of breach of policy condition cannot be sustained and is liable to be set aside.

16. It is interesting to note that in paragraph no.29 of the impugned judgment, the Tribunal has observed that, "from the observations made in the aforesaid rulings, it

appears to me that the insurer can pay the award amount to the petitioner at first instance and later on it can be recovered from the insured in the same proceeding". From the observations made as above, it is quite clear that the Tribunal was convinced that in view of the law laid down in the above referred judgments cited before it, no liability could have been saddled on the insurance company and it was liable to be exonerated from its liability to indemnify the insured and the only order which at the most could have been passed was to direct the Insurance Company to first pay the amount of compensation to the claimants and then recover the same from the insured. While passing the order, the Tribunal has, however, held the Insurance Company also liable to pay the amount of compensation along with the insured and has not passed any further order that the insurance company will be entitled to recover the amount of compensation paid by it to the claimants from the insured.

17. In the above circumstances, the finding recorded by the Tribunal that no breach of policy condition has been committed by the owner of the vehicle, is set aside and it is held that the insurance company has sufficiently proved that the insured has committed breach of policy condition by plying the APE Rickshaw on road without having any valid permit therefor on the date of the accident. Consequently, the insurance company is exonerated from its liability. Nevertheless, considering the beneficial object of the Act, as was directed by the Honourable Apex Court, in the case of Challa Bharathamma and others (cited supra), it would be proper for the Insurance Company to satisfy the award, though in law it has no liability, and then recover the amount paid by it from the insured in the proceeding before the Tribunal itself and it shall not be required to file any separate suit / proceeding for recovery of the said amount.

18. In so far as the other objection raised by the appellant insurance Company in respect of

the quantum of compensation on the ground that the deceased being bachelor, while assessing the amount of dependency compensation, it should have been assessed on one half of the income of the deceased, is concerned, I am not inclined to cause any interference for the reason that while determining the amount of compensation, the income of the deceased is held only to the tune of Rs.3,000/- per month.

19. The appeal thus stands allowed in aforesaid terms. Civil applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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