IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

3 FIRST APPEAL NO. 1781 OF 2013
WITH CA/13609/2015 IN FA/1781/2013

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
VERSUS
PRABHAKAR MAROTIRAO DHANPALWAR AND ANOTHER
...
Advocate for Appellant : Mr.S.G. Chapalgaonkar
Advocate for Respondent No.1 : Mr. Amol S. Gandhi h/for for Mr. U. B.Bilolikar
Advocate for Respondent No.2 : Mr.P V Ambade

CORAM : V. K. JADHAV, J.

DATE : 8th March, 2016

PER COURT :

1. In view of order dated 29th January, 2016, this appeal is taken up for final disposal at the stage of admission.

2. Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claim Tribunal, Biloli, District Nanded in MACP No.34/2007, the appellant insurer has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows:

i. The accident had taken place on 08.05.20017. On that day, the claimant was traveling in a goods carriage rickshaw bearing registration No.MH-26- H-1495 alongwith some other persons. He had boarded the said auto rickshaw for the purpose of going to Deglur. On the way, the said auto rickshaw turned turtle and as a result of which, the respondent/ claimant and other persons sustained injuries.

ii. The respondent/claimant filed Motor Accident Claim Petition No. 34/2007 before the Motor Accident Claim Tribunal, Biloli claiming compensation of Rs.2 lakhs against the owner and present appellant/ insurer of the vehicle.

iii. The appellant insurance company has contested the claim petition by filing written statement mainly on the ground that the respondent/claimant was travelling as gratuitous passenger in the goods carriage vehicle and therefore risk of such person is not covered under the policy.

iv. The learned Member has allowed the claim petition and granted compensation of Rs.38,150/- under various heads. Hence this appeal.

4. The leaned counsel for the appellant/insurer submits that the respondent claimant was travelling in a

goods carriage vehicle. Even though the defence was raised to that effect, the same was not considered by the learned Member of the Motor Accident Claim Tribunal, Biloli. The learned counsel submits that as per contents of the FIR, the respondent claimant was not travelling with the goods in the goods carriage vehicle. Consequently, risk of the respondent/claimant is not covered under the policy and the appellant Insurer is thus, not liable to pay any compensation to the claimant. The learned counsel submits that the learned Member of the Motor Accident Claim Tribunal ought to have exonerated the appellant Insurer from paying compensation to the respondent/claimant.

5. The learned counsel for the appellant, in order to substantiate his contentions, has placed reliance on the decision of Apex Court in the case of **United India Insurance Co. Ltd. Vs. Suresh K.K. And another,** reported in **AIR 2008 SUPREME COURT 2871**, wherein it is held that if owner of the goods travelling in goods carriage without goods and travels in capacity other than owner of goods, the Insurer is not liable to pay compensation.

6. The learned counsel for the respondent original claimant submits that the respondent/claimant was

travelling in the said vehicle alognwith grocery article. The learned counsel submits that the claimant is the owner of a small grocery shop. On the said day, he was proceeding towards Deglur alongwith grocery articles. The learned counsel submits that the learned Member of the Motor Accident Claim Tribunal, Biloli has therefore rightly allowed the claim petition and thereby directed the appellant/Insurer to pay compensation to the respondent/claimant with interest from the date of claim petition. The learned counsel submits that there is no substance in the appeal and the appeal is thus liable to be dismissed.

7. Following points arise for my consideration and I have recorded my findings thereon for the reasons mentioned below:

	Points		**Findings**
1)	Whether the Tribunal has correctly assessed the compensation for the injuries sustained by the claimants which resulted into permanent disablement ?	:	In the affirmative.
2)	Whether the appellant Insurer proves that the claimant was travelling as a gratuitous passenger in the goods carriage	:	In the negative.

vehicle and as such the risk is not covered under the policy ?

3)	Whether the impugned judgment and award calls for interference ?	:	In the negative.
4)	What order ?	:	As per final order.

8. It appears from the contents of the FIR that the person who has lodged the complaint had boarded the said auto rickshaw at some later stage and till that time, the claimant and other persons had already boarded the said auto rickshaw. The respondent original claimant has deposed on oath that he himself and one Tarabai were sitting on the backside of the auto rickshaw and he was carrying his goods in the said auto rickshaw. There were four gunny bags being carried in the said auto rickshaw and he purchased the said grains from retailers. It appears from the contents of the Spot Panchanama that certain grocery articles were found in the said auto rickshaw. Under this circumstance, it cannot be said that respondent original claimant was not travelling with goods in a goods carriage vehicle. Thus, the risk of the respondent original claimant is covered under the insurance policy.

9. Thus, there is evidence indicating that the respondent/ claimant was travelling alongwith goods in the goods carriage vehicle. There is nothing in the cross examination to disbelieve the evidence of the claimant, who has deposed that he was carrying grocery articles alongwith him while travelling in the goods carriage vehicle involved in the accident. I do not find any fault in the impugned judgment and award passed by the learned Member of the Motor Accident Claim Tribunal.

10. The learned counsel for the appellant/Insurer further submits that the learned Member of the Motor Accident Claim Tribunal has awarded exorbitant compensation, even though there is no income proof. Learned Member of the Motor Accident Claim Tribunal has awarded only Rs.5000/- towards loss of income for one month only, but the compensation is awarded under different heads such as permanent disability, hospital/medical bills, pains and sufferings, special diet and conveyance.

11. Accordingly, I answer Point No.1 in the affirmative, Point No.2 in the negative, Point No.3 in the negative and proceed to pass the following order:

O R D E R

i. The appeal is hereby dismissed.

ii. In the circumstances, there shall be no order as to costs.

iii. Respondent/ original claimant is hereby permitted to withdraw the amount deposited by the appellant/Insurer in response to the orders passed by this Court.

iv. Civil appreciation is accordingly disposed of.

(V. K. JADHAV, J.)

JPC