IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL 2640 NO. OF 2015

New India Assurance Company Ltd., Through its Branch Manager, Gayatri Krupa, Chandranagar, Ukka Mark, Latur, Through its Divisional Manager, Adalat Road, Aurangabad **APPELLANT**

V E R S U S

1 Nagorao S/o Rangrao Ghogre, Aged 54 Years, Occupation Agriculture, Resident of Takalgaon (Kam), Taluka Ahmedpur, District Latur **RESPONDENTS**

2 Balaji S/o Digamber Kedar, Aged 29 Years, Occupation Driver, Resident of Takalgaon, Taluka Ahmedpur, District Latur

3 Murlidhar S/o Maroti Mundhe, Aged Major, Occupation Business, Resident of Shelmoha, Taluka Parali, District Beed

Mr. S.G. Chapalgaonkar, Advocate for the Appellant
Mr. V.D. Gunale, Advocate for Respondent No.1

CORAM : A.V. NIRGUDE, J.

DATE : 26th August, 2016

ORAL JUDGMENT :

1. Heard.

2. Admit.

3. By consent, taken up for final hearing. Heard the learned counsel for the Appellant and for Respondent No.1.

4. This is Insurance Company's Appeal challenging the Judgment and Award dated 26th November, 2013, passed in Motor Accident Claim Petition No. 51 of 2011.

5. ***The facts leading to this litigation are as under*** :-

On 2nd July, 2009 at about 11.00 a.m., respondent - claimant boarded an Auto-Rikshaw, -a pickup Van- at his village Takalgaon to go towards Chakur. On the way, the Auto-Rikshaw met with an accident causing grievous injuries to the respondent-claimant. He sustained fracture to his limbs and thereafter he was hospitalized. Due to the injuries, he sustained 48% permanent disability. He lodged this claim-petition against the owner and driver of the pickup Van and the Insurance Company. Appellant - Insurance Company opposed the claim and denied their liability on the premise that being a Goods career, the owner and driver were not permitted to carry passengers.

6. This objection was overruled by the learned Member. He came to the conclusion that as per the policy 'cover-note', there is a mention of words "1+1 passenger" in such vehicle, and therefore, he thought that a passanger would get compensated.

7. The learned counsel for the Appellant asserted that the contract of Insurance, which is an admitted document must be read in the light of Section 147 of the Motor Vehicles Act, 1988. There is no doubt that this Goods-vehicle was permitted to carry two passengers; one obviously was the driver and other could be an employee of owner or a owner or representative of goods carried in such vehicle. Section 147 of the Motor Vehicles Act, 1988 reads as under :-

> "**147. Requirements of policies and limits of liability** :- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -
>
> (a) is issued by a person who is an authorised insurer; and
>
> (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) -
>
> (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
>
> (ii) Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;
>
> Provided that a policy shall not be required-
>
> (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation

Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to any such employee -

(a) engaged in driving the vehicle, or

(b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

(c) if it is a goods carriage, being carried in the vehicle, or

(ii) To cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:-

(a) Save as provided in clause (b), the amount of liability incurred.

(b) in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within a prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the

> policy purports to cover in the case of that person or those classes of persons."

8. It is clear from the above provisions that an Insurance Policy would cover death or bodily injury to any passenger of public service vehicle. The proviso categorically states that driver or conductor of public service vehicle or employees carried in the Goods-Vehicle would be limited to the liability under the Workmens Compensation Act. It does not make any mention about any passenger in a Goods carriage. The words "any person" appearing in Section 147 of the Act has thus a context of another term used in the provision namely 'a third party'. In view of this, in a Goods-career, the owner can allow either his employee or owner or representative of goods carried in the vehicle. Such passengers are covered by the Insurance Policy in addition to a third party (obviously out side the vehicle) who might sustain injury etc. due to driving of such vehicle. Section 147 of the Act further clarifies that even the owner of a passenger Car is under obligation to pay additional premium from covering the risk of his passengers. In other words, even a passenger in a Car may not be covered by the Insurance Policy if no premium is paid for covering such risk. The present case admittedly is of a Goods-career. Respondent No. 3 - owner of the vehicle thus is not protected by the Insurance Policy.

9. The Appeal to the extent of present Appellant should succeed. Hence, the following order :-

(Contd.. Page No. 6)

O R D E R

(1) First Appeal stands allowed.

(2) The Judgment and Award dated 26th November, 2013, in Motor Accident Claim Petition No. 51 of 2011 passed against the Appellant shall stand set aside.

(3) The rest of the said Judgment shall remain intact.

(4) The amount deposited in the Court shall be handed over to the Appellant.

Civil Application No. 11792 of 2015 stands dismissed.

(A.V. NIRGUDE, J.)

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