

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

**FIRST APPEAL NO. 1285 OF 2010
(WITH CA/11408/2016 IN FA/1285/2010)**

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad.

**...APPELLANT
(Original Respondent No.2)**

VERSUS

1. Neelabai w/o Pralhad Nevade,
Age 33 years, Occu. Household,
R/o. Kamkheda, Taluka & District Beed.
2. Ashvini d/o Pralhad Nevade,
Age 17 years, Occu. Education.
3. Kiran s/o Pralhad Nevade,
Age 14 years, Occu. Education

(Respondent Nos. 2 & 3 are minors,
U/g of their real mother respondent No.1)

4. Kailash s/o Mithu Shinde,
Age 33 years, Occu. Driver,
R/o. Kamkheda, Taluka & District Beed.

**...RESPONDENTS
(Resp.Nos.1 to 3 Original Claimants
Resp.No.4 Orig.Resp.No.1)**

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Mr.Mohit Deshmukh, Adv., h/f Mr. S.G.Chapalgaonkar,
Adv., for appellant.

Mr.K.B.Jadhavar, Advocate for respondent nos. 1 to 3.

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CORAM : P.R. BORA, J.

Dated: September 23, 2016

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ORAL JUDGMENT :-

1. Present Appeal is filed against the judgment and award passed by the Motor Accident Claims Tribunal, Beed, on 26th of February, 2010, in Motor Accident Claim Petition No.18/2007.

2. The aforesaid claim petition was filed by the present respondents claiming compensation on account of the death of one Pralhad Nevade in a vehicular accident happened on 29.8.2006. At the relevant time, the deceased was travelling by an auto rickshaw bearing registration No. MH-23-C-1735. The said rickshaw turned turtle and the deceased was thrown out. In the accident so occurred, he ultimately suffered death.

3. The auto rickshaw involved in the accident was owned by Pralhad Nevade i.e. the deceased. Respondent

no.4 in the present appeal, who was respondent no.1 in the claim petition before the Tribunal, was driving the rickshaw at the relevant time. The Crime for the offenses under Sections 279, 337 and 304-A of the Indian Penal Code was registered against him for negligently driving the auto rickshaw and thereby causing the accident in question. Legal heirs of deceased Pralhad filed claim petition against said driver and appellant Insurance Company seeking compensation on account of death of Pralhad. Learned Tribunal has allowed the claim petition and awarded compensation to the tune of Rs.4,18,000/- to the claimants. The Tribunal has held the appellant Insurance Company liable to pay the amount of compensation. The claim petition has been dismissed against respondent no.1 therein i.e. the driver of the Auto Rickshaw and has been allowed only against the Insurance Company, directing the Insurance Company to pay the amount of compensation to the claimants along with interest w.e.f. 23rd January, 2007 i.e. the date of filing of the claim petition. Aggrieved by the judgment and order so passed, the Insurance Company has filed the present

appeal.

4. Shri Deshmukh, learned Counsel appearing for the appellant Insurance Company, submitted that the manifest errors are committed by the Tribunal while delivering the impugned judgment. Learned Counsel submitted that without making owner of the vehicle as a party respondent, the Insurance Company could not have been added as respondent and no orders could have been passed only against the Insurance Company. Learned Counsel submitted that the policy of the auto rickshaw was not covering the risk of owner as a passenger and, as such, the Insurance Company could not have been held liable. To support his arguments, the learned Counsel placed reliance on following two judgments of the Honourable Apex Court; (1) Dhanraj v. New India Assurance Co.Ltd. and another (AIR 2004 SUPREME COURT 4767) and (2) New India Assurance Company Limited v. Prabha Devi and others (2013 AIR SCW 3779) and has prayed for allowing the present appeals in view of the ratio laid down in the aforesaid

judgments.

5. Shri K.B.Jadhavar, learned Counsel appearing for the original claimants, supported the impugned judgment. Learned Counsel invited my attention to clause (4) of the Insurance policy pertaining to the offending auto rickshaw and submitted that as per the said clause, the risk of the owner was covered by the Insurance policy of the offending vehicle. Learned Counsel submitted that the Tribunal has rightly interpreted the said clause (4) of the Insurance policy. Learned Counsel, therefore, prayed for dismissal of the appeals.

6. I have carefully considered the submissions made on behalf of the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the other material on record. The discussion made by the Tribunal, in paragraph no.12 of the impugned judgment reveals that it has held the deceased to be a passenger in the auto rickshaw and has accordingly held the Insurance Company liable for payment of

compensation to the legal heirs of the deceased. The Tribunal has also observed that merely because the deceased suffered the accidental death while travelling through an auto rickshaw, of which he, himself, was the registered owner, his legal heirs cannot be dis-entitled from claiming compensation from the Insurance Company and the Insurance Company cannot escape the liability on the said count. The Tribunal has further observed that the Insurance policy reflects the acceptance of premium towards the liability of three passengers in the auto rickshaw and in the circumstances, though deceased Pralhad was owner of the auto rickshaw, since he suffered accidental death while travelling as a passenger in the said rickshaw, his risk was covered under the Insurance policy.

7. The observations made and the findings so recorded by the learned Tribunal cannot be sustained in view of the law laid down by the Honourable Apex Court in the aforesaid two judgments cited by the learned Counsel for the Insurance Company.

8. In the case of New India Assurance Company Limited v. Prabha Devi and others (cited supra) the insured vehicle was involved in an accident in which owner thereof was travelling. The said vehicle overturned and the owner died as a result of the injuries caused in the said accident. The legal heirs of the deceased owner of the insured Jeep filed a claim petition under Section 166 of the Motor Vehicles Act for compensation before the Motor Accident Claims Tribunal against the Insurance Company with which the Jeep was insured. The Motor Accident Claims Tribunal allowed the claim petition and awarded the compensation to the legal heirs of the deceased. Aggrieved by the award so passed the Insurance Company filed First Appeal in the High Court of Uttaranchal. The High Court affirmed the finding of the Tribunal observing that since the deceased was travelling in the Jeep, the Insurance Company cannot escape the liability on the ground that the deceased was not a passenger in the said Jeep. The Insurance Company was, therefore, required to approach the Honourable Apex Court. The Apex Court allowed the appeal filed by the Insurance Company by

setting aside the judgment of the High Court as well as of the Motor Accident Claims Tribunal. I deem it expedient to reproduce the observations made by the Honourable Apex Court in paragraph nos. 8, 9 and 10 of the aforesaid judgment which are thus:

8. We have perused the judgment of this Court in the case of Dhanraj (supra). In that case, the appellant who was the insurer was travelling in the insured vehicle, which met with an accident. In the accident, the appellant as well as the other passengers received injuries. A number of claim petitions came to be filed. The appellant who was the insurer also filed a claim petition. The MACT held the driver of the Jeep responsible for the accident. In all the claim petitions filed by the other passengers, MACT directed that the appellant (the owner) as well as the driver and the Insurance Company were liable to pay compensation. Furthermore, in the claim petition filed by the appellant, the MACT directed the driver and the Insurance Company to pay compensation to the appellant. The aforesaid finding of the MACT was upheld by the High Court in the appeal filed by the Insurance Company. The Insurance Company was, in appeal before this Court challenging the judgment of the High Court awarding compensation to the owner of the insured vehicle. Taking into consideration the provision contained in Section 147 of the Act, this Court observed as follows :-

"8. Thus, an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an 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. Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

9. In the case of Oriental Insurance Co. Ltd.

versus Sunita Rathi it has been held that the liability of an insurance company is only for the purpose of indemnifying the insured against liabilities incurred towards a third person or in respect of damages to property. Thus, where the insured i.e. an owner of the vehicle has no liability to a third party the insurance company has no liability also.

10. In this case, it has not been shown that the policy covered any risk for injury to the owner himself. We are unable to accept the contention that the premium of Rs.4989 paid under the heading "own damage", the words "premium on vehicle and non-electrical accessories" appear. It is thus clear that this premium is towards damage to the vehicle and not for injury to the person of the owner. An owner of a vehicle can only claim provided a personal accident insurance has been taken out. In this case there is no such insurance."

9. In view of the observations so made and the law as laid down by the Honourable Apex Court, there remains no doubt that the risk of deceased Pralhad was not covered by the policy of insurance pertaining to the offending jeep and in no case the appellant insurance company could have been held liable for payment of compensation to the legal heirs of said deceased Pralhad.

10. It was sought to be canvassed by Shri K.B.Jadhawar, learned counsel appearing for the original claimants that the Insurance Company had accepted the

extra premium for covering the risk of three passengers travelling in the auto rickshaw and, as such, no error has been committed by the Tribunal in making an award against the Insurance Company. The argument so advanced must be rejected in view of the discussion made by me here-in-above and in view of the law laid down by the Honourable Apex Court in the judgments cited supra in the cases of New India Assurance Company Limited v. Prabha Devi and others as well as Dhanraj v. New India Assurance Co.Ltd. and another. As has been held by the Honourable Apex Court, the liability of Insurance company is only for the purpose of indemnifying the insured against the liability incurred towards a third party or in respect of the damages to the property and the Insurance Company cannot be held liable to pay the compensation to the legal heirs of the deceased owner of the offending motor vehicle.

11. It was further sought to be contended by Shri Jadhavar, learned Counsel, that the insurance policy pertaining to the offending auto rickshaw squarely covers

the risk of both, the owner as well as the driver of the said rickshaw. Learned Counsel invited my attention to Page No.6 of the insurance policy and the contents under caption, "SECTION-IV: PERSONAL ACCIDENT COVER FOR OWNER-DRIVER". Learned Counsel submitted that deceased Pralhad was admittedly owner of the offending auto rickshaw and, as such, his risk was covered by the insurance policy of the vehicle. I have carefully perused the relevant contents of the said policy under the aforesaid caption, on perusal of which it appears difficult to accept the argument so made by the learned Counsel. The aforesaid clause in the policy covers the risk if the owner himself is driver of the insured vehicle and it cannot be in any way interpreted to mean that the insurance cover is provided to the owner as well as the driver of the insurance vehicle. In the said clause itself, it is provided that the personal accident cover for owner-driver is subject to following conditions:

"This cover is subject to:

- (a) The owner-driver is the registered owner of the vehicle insured herein.
- (b) The owner-driver is the insured named in this policy.

(c) The owner-driver holds an effective driving license, in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, at the time of the accident. "

On reading the aforesaid restrictions there remains no doubt that the risk of deceased - owner of the insured vehicle was not covered by the Insurance policy of the said vehicle. From the pre-conditions as provided here-in-above, it is quite clear that the policy covers the risk of registered owner of the insured vehicle only if he himself is driving the vehicle at the time of accident and holds an effective driving license in accordance with the provisions of Rule 3 of the Central Motor Vehicles Rules, 1989. In the instant matter, the registered owner of the insured auto-rickshaw i.e. deceased Pralhad was admittedly not plying the said rickshaw when it met with an accident.

12. In the case of Oriental Insurance Company Ltd. Vs. Sunita Rathi (A.I.R. 1998 SUPREME COURT 257), it has been held that the liability of an Insurance Company is only for the purpose of indemnifying the insured against the liabilities incurred towards a third person or in respect

of damages to the property. Thus, where the insured i.e. the owner of the vehicle has no liability to a third party, the Insurance Company has no liability also. In the instant case it has not been shown that the policy of the insured vehicle covered any risk for injury to owner himself. In the circumstances, no liability could have been fastened against the appellant Insurance Company.

13. For the reasons stated above, the argument advanced by the learned Counsel for the original claimants has to be rejected. The Tribunal has grossly erred in holding the appellant Insurance Company liable to pay amount of compensation to the claimants who are the legal heirs of the deceased owner of the insured vehicle. The impugned award, therefore, needs to be quashed and set aside and it is accordingly quashed and set aside. Consequently, the Claim Petition No.18/2007 stands dismissed. The amount of compensation, if any, deposited by the appellant Insurance Company in this Court shall be refunded to it with the interest accrued thereon. First Appeal No.1285 of 2010 stands allowed in

the aforesaid terms. Pending Civil Application, if any, stands disposed of.

(P.R. BORA)
JUDGE

AGP/1285-16fa