IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2590 OF 2015

National Insurance Company .. Applicant

Versus

Ramesh S/o. Manik Marathe and others .. Respondents

Mr.S.N.Pagare, Advocate for the applicant
Mrs.S.T.Kazi, Advocate for respondent No.1
Mr. S.P. Bramhe, Advocate for respondent No.2

CORAM : A.V.NIRGUDE, J
DATED : 29.08.2016

P.C. :-

1. The Insurance Company filed this appeal for challenging the judgment and award dated 26.06.2015 passed by the learned Member of Motor Accident Claims Tribuna, Dhule in Motor Accident Claim Petition No.539/2011.

2. Respondent No.1 was the original claimant who was a passenger of a private vehicle and suffered injury and due to which he suffered permanent disablement.

3. Respondent No.2 is the owner of the vehicle. The vehicle is a car for carrying six passengers. This was a private vehicle.

4. The accident took place on 27.02.2011 when the respondent No.1 was traveling in the vehicle from Shahada to Dondaicha as gratuitous passenger being friend of the owner.

5. While opposing the petition the appellant Insurance Company took up a defence that respondent No.1 was a fare paying passenger and therefore there was a breach of insurance policy conditions. At one point of time at one place in the written statement the appellant insurance company also indicated that their liability is limited to Rs.1,00,000/-. However, proper defence was not taken stating that the Insurance policy in this case covered only limited liability towards the passengers.

6. On perusal of policy I found that the Insurance Company undertook limited liability for providing protection to the extent of Rs.1,00,000/- per passenger, in case of mishap. But this aspect of the case was completely ignored while drafting the written statement and therefore the learned Member of the Motor Accident Claims Tribunal, Dhule was deprived from framing an appropriate issue.

7. Learned Counsel for the appellant argued that on this point he should be allowed to argue the appeal. I am

afraid this line of argument was not available to him in absence of proper pleading to that effect.

8. The accident took place way back in 2011. The Insurance company has already deposited certain amount. Therefore I am not inclined to remand the case back for framing the issue etc. The appeal should therefore fail. In view of this the first appeal stands dismissed.

9. In view of disposal of the first appeal the Civil Application No.12608/2015 does not survive and disposed of.

[A.V.NIRGUDE,J.]