IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2105 OF 2014

New India Assurance Co.Ltd.
Branch Manager, airport Road, Yerwada, Pune,
Through its authorized signatory,
Asst.Manager, Legal Hub,
New India Assurance Co. Ltd., R/o. Aurangabad.

...APPELLANT/
Orig.Resp.No.3

VERSUS

1. Abhiman Walji Kadhare,
Age 48 yrs.,, Occ. Labour.

2. Sou.Bebabai Abhiman Kadhare
Age 44 yrs. Occ. Household.

Both R/o. Japi, Tq. Dist. Dhule.

...ORIG.CLAIMANTS

3. Gulam Ahmad Bale Mohammad
Age 53 yrs. Occ. Vehicle Owner
R/o. Indama Zopadpatti, Malegaon,
Tq. Malegaon, Dist. Nasik.

4. Smt. Latabai Amrut Dhivare
Age 47 yrs. Occ. Vehicle Owner
R/o. Sangameshwar Ward, Ambedkar Nagar
Malegaon, Tq. Malegaon, Dist. Nashik.

(5. Shahaji Janardan Shinde,
Age 51 yrs. Occ. Driver,
R/o Galli No.1, Ambedkar Nagar,
Malegaon, Tq. Malegaon, Dist. Nashik.)
(Appeal dismissed as against R/5 as per
Hon'ble Courts order dated 9.10.2015)

...RESPONDENTS /
Orig.Claimants & Resp.Nos. 1, 2 and 4.

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Mr.D.P.Deshpande, Advocate for appellant.
Mrs. S.T.Kazi, Advocate for respondent nos. 1 and 2.
Respondent nos. 3 and 4 served.
Appeal dismissed as against R/5 as per Hon'ble Courts order dt.9.10.2015.

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CORAM: P.R.BORA, J.

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Date of reserving the judgment: 27/10/2016

Date of pronouncing the judgment: 20/12/2016

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JUDGMENT:

1. Present Appeal is filed against the judgment and award passed by the Motor Accident Claims Tribunal at Dhule in M.A.C.P.No.1142/2011, decided on 31st of July, 2014.

2. The aforesaid Claim Petition was filed by present respondent nos. 1 and 2 seeking compensation on account of death of one Sanjay Abhiman Katare in a vehicular accident happened on 11th May, 2011, having involvement of a Tata-407 truck bearing registration No.MH-15/G-2686 owned by present respondent no.3 and insured with the present appellant. The Claim Petition was resisted by appellant Insurance Company mainly on

the ground that the deceased was a fair paying passenger in a goods truck which was insured with it and, as such, the risk of the deceased was not covered under the policy of insurance purchased by respondent no.3 for the insured vehicle. According to the appellant Insurance Company by carrying a fare paying passenger in a goods truck, the owner of the truck had committed breach of the terms and conditions of the Insurance policy and as such the insurance company not liable to indemnify the insured.

3. In view of the plea so raised by the Insurance Company in its written statement, a specific issue was framed by the Tribunal in that regard and the Tribunal has recorded an affirmative finding on the said issue thereby holding that respondent no.3 i.e. the appellant Insurance Company has proved that respondent nos. 1 and 2 i.e. driver and owner of the insured vehicle have committed breach of terms and conditions of the Insurance policy. Despite recording the finding as aforesaid the learned Tribunal, however, held the appellant Insurance Company jointly and severally liable to pay the amount of compensation to the claimants. The learned Tribunal has

further issued a direction against the appellant Insurance Company to pay the amount of compensation to the petitioners at the first instance and then recover the said amount from the Driver and owner of the insured vehicle jointly or severally along with the interest thereon at the rate of 10 per cent per annum from the date of payment of the said amount till its realization. Aggrieved thereby, the Insurance Company has filed the present appeal.

4. Mr. D.P.Deshpande, learned Counsel appearing for the appellant Insurance Company, submitted that once the Tribunal has recorded an affirmative finding thereby holding that the Insurance company has proved the breach of the terms and conditions of the policy by the Driver and owner of the insured vehicle, the Tribunal ought not have held the Insurance Company liable to pay the amount of compensation to the claimants jointly and severally with the driver and owner of the insured vehicle. Learned Counsel further submitted that the Tribunal has manifestly erred in directing the appellant Insurance Company to pay the amount of compensation to the claimants at the first instance and then to recover the said amount from the

driver and owner of the insured vehicle. Relying on the following judgments, the learned counsel prayed for setting aside the impugned judgment and award and, consequently, to dismiss the Claim Petition against the appellant Insurance Company:

1. National Insurance Co.Ltd. Vs.Baljit Kaur and others. (AIR 2004 SC 1340)

2. United India Insurance Co.Ltd.
through it's Divisional Manager and
Authorised Representative and Signatory.
vs.
Anubai Gopichand Thakare and others
(2008 (1) Mh.L.J. 73)

3. National Insurance Co.Ltd.
vs.
Bommithi Subhayamma and others
(2005 ACJ 721)

4. National Insurance Co.Ltd.
vs.
Prema Devi and others
(2008 (3) SCALE 393)

5. New India Assurance Co.Ltd.
vs.
Vedwati and ors.
(AIR 200-7 SC 1334)

5. Smt. S.T.Kazi, learned Counsel appearing for

the original claimants i.e. respondent nos. 1 and 2 in the present appeal, opposed the submissions advanced on behalf of the appellant Insurance Company. Learned counsel supported the impugned judgment and award. Learned Counsel, placing her reliance on two judgments of this Court, one in the case of United India Insurance Co.Ltd. Vs. Sindhubai w/o Kondiram Darwante (Mh.L.J. 2010-3-886) and the other in the case of Bajaj Allianz General Insurance Co.Ltd. Vs. Sangita wd/o Bhagwan Raut and others (2015 (1) Mh.L.J.883), submitted that the Tribunal has not committed any error in issuing the directions against the appellant Insurance Company to pay to the claimants the amount of compensation as per the award and then recover the said amount from the Driver and owner of the insured vehicle.

6. The only question which falls for my consideration in the present appeal is whether the appellant Insurance Company can be jointly or severally held liable to pay the amount of compensation to the claimants and whether the direction given by the Tribunal in the impugned judgment and award against the appellant

Insurance Company, to first pay the amount of compensation to the claimants as per the impugned award and then to recover the said amount from the Driver and owner of the insured vehicle can be sustained.

7. Section 147 of the Motor Vehicles Act, 1988 speaks about the requirements of policies and limits of liability. Section 147(1)(b)(i) of the Act provides that in order to comply with the requirement of Chapter XI of the Motor Vehicles Act, a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or damage to any property of third party caused by or arising out of the use of the vehicle in a public place.

8. Plain reading of the aforesaid provision makes it abundantly clear that the Statute does not require that the policy of Insurance shall cover the risk of a person carried

in a vehicle as a fare paying passenger.

9. Section 149(1) of the Act provides that if, after a certificate of Insurance has been issued under sub-section (3) of Section 147 of the Act, in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy), the insurer shall, subject to the provisions of this Section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respects of costs and any sum payable in respect of interest by virtue of any enactment relating to interest on judgments.

10. The conjoint reading of Section 147 (1)(b) and Section 149 (1) of the Act leaves no doubt that the insurer cannot be fastened with the liability to satisfy the judgment and award passed against the insured in respect

of the death of or bodily injury to any person whose risk is not covered under the policy of Insurance issued by the insurer under Section 147(3) of the Act.

11. In the instant matter, the Tribunal has recorded an unambiguous finding that the deceased was a fair paying passenger in the insured vehicle involved in the alleged accident which was, admittedly, a goods carriage. As has been held by the Tribunal, since the insured vehicle was not to be used for carrying the passengers for hire or reward, there has been a breach of a specified condition of the policy of the insured vehicle. In view of the fact that the risk of the deceased was not at all covered by the policy of insurance, there was no reason for the Tribunal to hold the appellant Insurance Company jointly and severally liable to pay the amount of compensation to the claimants. Neither any such direction could have been issued by the Tribunal against the appellant Insurance company to first pay the amount of compensation as per the award to the claimants and then to recover the said amount from the owner of the vehicle involved in the alleged accident.

12. Relying on the judgment of this Court in the case of United India Insurance Co.Ltd. Vs. Sindhubai w/o Kondiram Darwante and Bajaj Allianz General Insurance Co.Ltd. Vs. Sangita wd/o Bhagwan Raut and others (cited supra), though it was sought to be contended on behalf of the original claimants that the Tribunal has rightly issued the direction against the insurer to first deposit the amount of compensation payable to the claimants and, thereafter, to recover the same from the insured by executing the same award, it does not appear to me that in the facts of the present case, the said judgments may be of any help to take further the cause of the original claimants. In the case of Bajaj Allianz General Insurance Co.Ltd., whether the risk of the deceased was covered under the Insurance policy, was not the point at issue. The issue involved in the said case was as regards to the defense raised by the Insurance Company as about the driving license of the driver who was driving the offending vehicle at the time when the accident happened. In the case of United India Insurance Co.Ltd. Vs. Sindhubai w/o Kondiram Darwante, the learned

Single Judge has discussed about the powers of the Tribunal to pass the pay and recover orders. In paragraph No.26 of the said judgment, the learned Single Judge has observed that the pay and recover orders cannot be passed in all the cases, as of rule, where the insurer is held not liable to indemnify the insured. In the instant matter, it appears to me that when the risk of the deceased was not covered under the policy of insurance, it may be unjust even to direct the Insurance Company to first pay the amount of compensation and then to recover it jointly or severally from the driver or the owner of the insured vehicle.

13 For the reasons stated above, the impugned judgment and award, so far as it held the appellant Insurance Company jointly and severally liable to pay the amount of compensation to the claimants and the further direction given by the Tribunal to the appellant Insurance Company to first pay the amount of compensation to the claimants and then to recover it jointly and severally from the driver and owner of the insured vehicle, stands quashed and set aside. Consequently, the Claim Petition

stands dismissed against the appellant Insurance Company.

The amount, if any, deposited by the appellant Insurance Company in this Court or before the Tribunal shall be refunded to it with interest accrued thereon, if any.

The Appeal stands allowed in the aforesaid terms, however, without any order as to the costs. Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

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AGP/2105-14fa