IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.3104 OF 2015
with
CIVIL APPLICATION NOS.15425/2015 & 4623/2016

National Insurance Company Ltd.
Divisional Office at Hazari
Chamber, Railway Station Road,
Aurangabad,
Through its Divisional Manager. ..APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Shantaram @ Popat Chindhu Patil
Age: 48 years, Occu.: Nil,

2. Arun Damu Patil,
Age: 42 years, Occu.: Driver & Owner,

Both R/o Devpimpri, Tq. Jamner,
Dist. Jalgaon. ..RESPONDENTS
(Resp.No.1 is the original claimant, Resp.No.2 is the original Resp.No.1)

WITH

FIRST APPEAL NO.3105 OF 2015
with
CIVIL APPLICATION NOS.15426/2015 & 4218/2016

National Insurance Company Ltd.
Divisional Office at Hazari
Chamber, Railway Station Road,
Aurangabad,
Through its Divisional Manager. ..APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Shalik Damu Koli
Age: 51 years, Occu.: Nil,

2. Arun Damu Patil,
Age: 42 years, Occu.: Driver & Owner,

Both R/o Devpimpri, Tq. Jamner,
Dist. Jalgaon. .. RESPONDENTS
(Resp.No.1 is the original claimant, Resp.No.2 is the original Resp.No.1)

WITH

FIRST APPEAL NO.3107 OF 2015
with
CIVIL APPLICATION NO.15439/2015 & 6148/2016

National Insurance Company Ltd.
Divisional Office at Hazari
Chamber, Railway Station Road,
Aurangabad,
Through its Divisional Manager. .. APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Santosh Daulat Patil
Age: 56 years, Occu.: Nil,

2. Arun Damu Patil,
Age: 42 years, Occu.: Driver & Owner,

Both R/o Devpimpri, Tq. Jamner,
Dist. Jalgaon. .. RESPONDENTS
(Resp.No.1 is the original claimant, Resp.No.2 is the original Resp.No.1)

...

Mr.S.P.Chapalgaonkar, Advocate for appellants;

Mr.S.R.Dheple, Advocate for Respondent No.1.

CORAM : P.R.BORA, J.

DATE : 3rd May,2016.

ORAL JUDGMENT:

1) Heard finally. Since the Judgments and

Awards challenged in the present appeals pertain to the claim petitions filed arising out of the one accident and common grounds are raised in exception to the impugned judgments and awards passed in the respective claim petitions, I deem it appropriate to decide the present appeals by a common judgment.

2) The appellant insurance company has challenged the impugned judgments and Awards on the ground that the Motor Accident Claims Tribunal (for short, the Tribunal) has not properly considered the defence raised by the insurance company as regards to the validity of the driving licence of the driver of the rickshaw involved in the alleged accident and about unauthorized use of the said rickshaw for commercial purpose. The appellant had also raised an objection that at the relevant time, excess passengers were being carried through the offending rickshaw and the insurer has thereby committed breach of policy condition.

3) Shri Chapalgaonkar, learned Counsel appearing for the appellant insurance company, submitted that the driver of the offending rickshaw was holding a learner’s licence on the date of the alleged accident. The learned Counsel further submitted that there were excess numbers of passengers being carried at the relevant time through the offending rickshaw. The learned counsel submitted that owner of the auto rickshaw has thus apparently committed breach of the policy conditions and the insurance company was, therefore, liable to be exonerated from its liability to indemnify the insured.

4) The learned Counsel appearing for the original claimants supported the impugned judgments and awards.

5) On perusal of the impugned judgments and awards, it is revealed that though in all the three claim petitions the Tribunal has preferred to pass separate judgments and awards, common

reasoning is provided on the issue of involvement of the vehicle and negligence on the part of the driver of the offending vehicle and also as regards to the defences raised by the appellant insurance company.

. The material on record reveals that though the aforesaid defences were raised by the appellant insurance company, it did not adduce any evidence in order to prove the contentions raised by it in its written statement. The learned Tribunal has rightly recorded that burden was on the insurance company to prove its allegation that the owner has committed the breach of the policy conditions by leading cogent and sufficient evidence therefor. When it was the case of the appellant insurance company that driver of the offending rickshaw was not holding a valid and effective licence to drive the said vehicle, but was holding a learner's licence, the burden was certainly on the insurance company to prove that the insured has not exercised the due diligence in allowing the said driver to drive the said auto rickshaw.

. In so far as other objection that excess passengers were being carried the said auto rickshaw, the learned Tribunal has rightly observed that only three petitioners were before the Court, who have claimed the compensation in relation to the alleged accident. The Tribunal has further observed that in the insurance policy of the offending vehicle, the risk of 3+1 passengers is covered. The Tribunal has, therefore, rightly rejected the objection raised by the insurance company. So far as the allegation as regards to the unauthorized commercial use of auto rickshaw is concerned, the insurance company has utterly failed in substantiating the said objection.

6) Having regard to the facts, as aforesaid, it does not appear to me that the Tribunal has committed any error in holding the appellant insurance company liable to pay compensation to the claimants in the respective

claim petitions jointly or severally with the owner of the offending vehicle. The appeals are devoid of any substance and the same are liable to be dismissed and are accordingly dismissed, however, without any order as to the costs.

7) The respondents – original claimants in the respective claim petitions are permitted to withdraw the amount of compensation, if any, deposited by the appellant – insurance company, either in this Court or before the Tribunal, in terms of the judgments and awards passed by the Tribunal. All pending civil applications stand disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/2.5.2016