IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

3 FIRST APPEAL NO. 175 OF 2015
WITH CA/639/2014 IN FA/175/2015 WITH CA/8007/2014 IN FA/175/2015

THE NEW INDIA ASSURANCE CO. LTD.
VERSUS
GAJANAN NANA WAYDANDE AND ANOTHER
...
Advocate for Appellant : Gatne Atul B.
Advocate for Respondent No. 1 : R.A. Tambe
...

CORAM : T.V. NALAWADE, J.
DATED : 22nd February, 2016.

ORDER :

1) The appeal is filed by the Insurance Company against the judgment and award of the Claim Petition No. 222/2007, which was pending before the Claims Tribunal, Shrirampur, District Ahmednagar. Both the sides are heard.

2) The accident took place on 5.6.2007 at about 8.30 p.m. within local jurisdiction of Shrirampur Police Station. It is the case of claimant that rickshaw bearing No. MH-05/8233 gave dash to him when he was a pedestrian. It is contended that the accident took place due to fault of rickshaw driver. It is the case of claimant that he sustained grievous injuries like fracture of tibia fibula lower 1/3rd and injury to head also like subdural haemotoma under left parieto occipital region. It is his case that even after the treatment and spending huge amount on

treatment, he is not fully recovered. It is his case that in the past, he was working as a mason and he was earning Rs. 3000/- per month and he cannot do work due to aforesaid injuries. He has restricted his claim up to Rs. 2,00,000/-.

3) The Insurance Company contested the matter by filing written statement. The Insurance Company denied everything. Alternatively, it contended that the driver of the vehicle was not holding valid and effective licence and there has been breach of conditions of policy.

4) To prove the claim, the claimant examined himself and he produced the record of injury and amount spent on treatment and medicines. The fact of accident is not disputed and the submissions made by the learned counsel for Insurance Company show that the Insurance Company wanted to prove that there has been breach of conditions of policy as the driver of the rickshaw was not holding valid and effective driving licence. In view of these submissions and as meager amount of compensation like the amount of Rs. 2,10,416/- is awarded even when there is permanent disability to the extent of 25%, this Court holds that there is no need to discuss in detail the evidence of doctor and evidence on permanent disability. There

is deformity due to shortening of right leg.

5) For considering the other defence like breach of terms and conditions of policy, this Court has gone through the record like police papers. The copy of F.I.R. shows that no crime was registered against the driver of auto rickshaw for driving the vehicle without licence. It appears that certificate issued by R.T.O. Office was produced. The certificate shows that the licence was issued for auto-rickshaw (non transport) on 15.12.2000 and this licence was valid up to 14.12.2025 for 25 years. The accident took place on 5.6.2007 and so, on the day of accident, the driver was holding licence, atleast to drive rickshaw though there was endorsement of non transport. Exh. 43, certificate of R.T.O. shows that licence in respect of transport vehicle was obtained on 31.7.2007 and it was valid up to 30.7.2004. It was again obtained from 6.6.2007 for the period of three years. In view of these circumstances, the learned counsel for Insurance Company, appellant submitted that on the day of the accident, the driver was not holding the licence to drive the transport rickshaw and so, there has been breach of conditions of policy. It is already observed that no crime was registered for driving vehicle without licence. The rickshaw was having yellow and black colour, which is used for carrying fare paying

passengers, a taxi. Copy of Insurance certificate shows that the vehicle Bajaj Auto Rickshaw was insured and it has capacity of three persons. Premium in respect of 3 passengers was paid and premium in respect of one employee, driver, was also paid. In view of these circumstances, it cannot be said that there was breach of conditions of policy. On this point, the case reported as **(2015) 2 SCC 186 [Kulwant Singh & Ors. Vs. Oriental Insurance Company Limited]** can be cited. The learned counsel for Insurance Company has placed reliance on the case of reported as **2008 ACJ 2654 [Ram Babu Tiwari Vs. United India Insurance Co. Ltd. and Ors.]**. In recently decided case of **Kulwant Singh** cited supra, the Apex Court has laid down that in such a case, Insurance Company cannot be absolved from it's liability to indemnify it's owner and so, this Court holds that there is no force in the challenge of Insurance Company on aforesaid point.

6) In the result, the appeal stands dismissed. Amount, if any, deposited in this Court is to be sent to the Tribunal for disbursement. All civil applications are disposed of.

[T.V. NALAWADE, J.]

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