THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 2065 OF 2008

United India Assurance Company Ltd.,
Through its Divisional Manager,
Adalat Road, Aurangabad. ... **APPELLANT**
(Original Respondent No.2)

V E R S U S

1) Sharda W/o Mukesh Jaiswal,
Age : 36 years, Occu: Household,
R/o Vinayaknagar, Nanded.

2) Rashmi D/o Mukesh Jaiswal,
Age : 15 years, Minor U/g Respondent No.1

3) Sanket S/o Mukesh Jaiswal,
Age : 12 years, Minor U/g Respondent No.1

4) Neha D/o Mukesh Jaiswal,
Age : 10 years, Minor U/g Respondent No.1

5) S. Avtarsingh S/o. S. Jogender Singh,
Aged : Major, Occu: Business,
(Owner of Car No. BLB 5888)
R/o Sindhi Colony, Nanded
(Died Through L.Rs.)

5A) Jaswantkour W/o S. Avtar Singh,
Age : 33 years, Occu: Household,

5B) Jitendrasingh @ Bittu S/o S. Avtar Singh,
Age : 25 years, Occu: Business,

5C) Shitalkour D/o S. Avtarsingh,
Age : 20 years, Occu: Education,

5D) Satbisingh S/o S. Avtarsingh,
Age : 19 years, Occu: Education,
All R/o Vinayaknagar, Nanded.

6) Maharashtra State Road Transport Corporation,
Through it's Divisional Manager,
District Parbhani. ... **RESPONDENTS**

(Resp. Nos.1 to 4 Orig. Claimants and
Resp. No.5A to 5D & 6
Orig. Respondents No.A1 to A4 & 3 respectively)

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Mr. S. G. Chapalgaonkar, Advocate for Appellant.
Mr. G. R. Syed, Advocate for Respondent No.4.
Mr. Manoj Shinde, h/f M. K. Goyanka, Advocate for Respondent No.6.

...

CORAM : **V. K. JADHAV, J.**
DATE : 27th April, 2017.

ORAL JUDGMENT:

. Being aggrieved by the judgment and award passed by the learned Chairman of the Motor Accident Claims Tribunal, Nanded dated 8th January, 2008 in MACP No.597 of 2002, original Respondent No.2 / Insurer has preferred this appeal.

2 Brief facts giving rise to the present appeal are as follows:

a) On 23rd August, 2002, deceased Mukesh was travelling in a motor car from Nanded to Aurangabad and on Jintur-Aundhar road, one S.T. Bus coming from the opposite direction dashed against the car. In consequence of which, deceased Mukesh sustained grievous injuries and ultimately succumbed to those injuries.

b) The Claimants / legal representatives of deceased Mukesh approached to the Motor Accident Claims Tribunal, Nanded by filing MACP No.597 of 2002 for grant of compensation under the various heads. It has been contended in the claim petition that the accident has taken place due to the negligence on the part of the drivers of both the vehicles. Deceased Mukesh was getting salaried income and the Claimants were depending upon his income.

c) Respondent / owner has resisted the claim petition by filing the written statement. It has been contended in the written statement that the accident had taken place due to the fault on the part of the driver of the S.T. Bus and the vehicle involved in the accident since insured with Respondent No.2, the Respondent / owner is not liable to pay the compensation.

d) Appellant / Insurer has also strongly resisted the claim on the ground that deceased Mukesh was travelling in the car as a gratuitous passenger in contravention of the terms of insurance policy and as such, the Appellant / Insurer is not liable to pay the compensation.

e) Respondent No.3 / MSRTC has also denied the liability on the ground that the driver of the car was negligent and responsible for the accident and even the crime was also registered against him. The Claimants have adduced the oral and documentary evidence in support of their contentions. Respondent Nos.1 and 2 have not adduced any evidence. However, Respondent No.3 / MSRTC has examined the driver of the S.T. Bus.

f) The learned Chairman of the Tribunal has partly allowed the claim petition and thereby directed Respondent Nos.1 and 2 to pay jointly and severally sum of Rs,7,50,000/- with interest. Hence, this appeal by the original Respondent / Insurer of the car involved in the accident.

3 The learned counsel for Appellant / Insurer submits that the Claimants have preferred the claim against the owners of both the vehicles involved in the accident. Petitioner No.1 Sharda has no personal knowledge about the accident and she was not an eye witness to the accident. In absence of any independent direct evidence, the Tribunal has fixed the liability of negligence. So far as second ground raised by the Appellant / Insurer in the appeal memo that deceased Mukesh was travelling as a gratuitous passenger in the vehicle car involved in the accident and as such, the Appellant / Insurer is not liable to pay the compensation, the learned counsel has fairly conceded that in terms of the policy conditions and the law laid down by the Supreme Court in the case of ***National Insurance Company Ltd. Vs. Balakrishnan and Anr.***, reported in, ***AIR 2013 Supreme Court 473*** and in view of the circulars issued by four companies of the General Insurance, the risk of the occupant of the private car is covered in the comprehensive policy and as such the policy issued in this matter, covers the risk.

4 I have also heard the learned counsel for Respondents /

Claimants and the learned counsel for Respondent / MSRTC.

5 Though Claimant No.1 has no personal knowledge about the accident and though she was not an eye witness to the accident, the Tribunal has taken into consideration the documentary evidence placed on record. Furthermore, Respondent / MSRTC has also examined the driver of bus. It appears from the contents of FIR and spot Panchanama that the said S.T. Bus was at extreme left side of the road at the time of accident and the said car went in wrong direction and gave dash to the S.T. Bus. Furthermore, DW-1 Gyandev driver of S.T. Bus has also deposed in the similar manner. According to him, the S.T. Bus was at extreme left side of the road and it was the car, which came to the wrong side and gave dash to the S.T. Bus. Thus, I do not find any fault in the findings recording by the Tribunal that the driver of the car alone was responsible for the accident and none else.

6 So far as the second point raised by Appellant / Insurer is concerned, in view of the ratio laid down by the Supreme Court in the case of *National Insurance Company Ltd. Vs. Balakrishnan and Anr.* (supra), the risk is covered under the comprehensive policy issued by

the Appellant / Insurer in respect of the car involved in the accident. The learned counsel for Appellant / Insurer has also fairly conceded the same.

7 In view of the above, I find no substance in the appeal. Hence, the following order:

ORDER

I. The appeal, is hereby dismissed. In the circumstances, there shall be no order as to the costs.

II. The Respondents / Claimants are permitted to withdraw the amount alongwith accrued interest if deposited by the Appellant / Insurer before this Court.

III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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