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

FIRST APPEAL NO.: 2996 OF 2013

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
GULABRAO NILKANTH GHUMRE AND OTHERS

WITH

FIRST APPEAL NO.: 2997 OF 2013

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
GAUTAM CHOKHOBA SARODE AND ANOTHER

AND

FIRST APPEAL NO.: 2998 OF 2013

THE NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
RAMESH SAJJAN WARBHUVAN AND ANOTHER

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Advocate for Appellant : Mr. Ajit B. Kadethankar.
Advocate for Respondent No.1 : Mr. Rahul P. Dhase.
Advocate for Respondent No.2 : Mr. R. P. Shendge, h/f Mr. N. L. Jadhav.

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CORAM : **V. K. JADHAV, J.**
DATE : 17th January, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 19th September, 2013 in MACP No.41 of 2010, the judgment and award passed by the Motor

Accident Claims Tribunal, Beed dated 21st September, 2013 in MACP No.42 of 2011 and judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 21st September, 2013 in MACP No.141 of 2011, the Appellant / Insurer has preferred these three separate appeals.

3 Brief facts giving rise to these first appeals are as follows:

i. On 17th May, 2009, all the Respondents / Claimants have gone to village Limba Rui for attending one marriage ceremony. They were returning alongwith other persons by a jeep bearing registration No.MH-12-E-7524. On way, near village Ukhanda on Beed-Nagar highway, the driver of the jeep, who was driving the jeep in a high speed and rash and negligent manner, could not control the said jeep and thus, the jeep came to be turtled. All the Respondents / Claimants in these appeals sustained injuries. They were shifted to the hospital and undergone the medical treatment. The Respondents / Claimants thus, filed the aforesaid motor accident claims petitions before the Motor Accident Claims

Tribunal, Beed for grant of compensation under the various heads.

ii. Respondent No.1 / owner though duly served, failed to appear before the Tribunal and therefore, all the aforesaid petitions were ordered to be proceeded *ex-parte* against him.

iii. Appellant / Insurer has strongly resisted the claim petitions by filing the written statement. It has contended that the accident had taken place on account of rash and negligent driving on the part of the driver of the jeep. It is not disputed that the said jeep is insured with Appellant / Insurer at the relevant time. However, it has contended that the claim petition is vague, excessive and exorbitant. It has also contended that there has been a breach of terms and conditions of the policy. The driver of the jeep was not holding valid and effective driving licence at the time of accident. It has also contended that Respondents / Claimants were travelling in the said jeep as fare paying passengers and thus the owner of the jeep has willfully violated the terms and conditions of the policy. It has also contended that the insurance policy issued by the Appellant / Insurer covers the risk to the extent of Rs.1,00,000/- under Personal Accident only for the passengers travelling in the said vehicle and therefore, no additional liability can be saddled on the Appellant / Insurer.

iv. The Claimants and also the Appellant / Insurer have adduced oral and documentary evidence in support of their rival contentions. The learned Member of the Motor Accident Claims Tribunal, Beed vide its impugned judgment and award in MACP No.41 of 2010 partly allowed the claim petition and thereby directed the Appellant / Insurer and the Respondent / owner to pay jointly and severally the amount of compensation of Rs.4,86,700/- inclusive of no fault liability alongwith interest at the rate of 7% per annum and by the impugned judgment and award in MACP No.141 of 2011 and MACP No.42 of 2011 awarded the compensation of Rs.28,000/- each directing the Appellant / Insurer and the Respondent / owner to pay the same jointly and severally alongwith interest at the 7% per annum from the date of filing of the petition till full satisfaction of the award. Being aggrieved by the same, the Appellant / Insurer has preferred these three separate appeals.

4 The learned counsel for Appellant / Insurer submits that the insurance policy covers the risk of passengers under Personal Accident, which is an additional cover given by accepting the extra premium. The learned counsel submits that since the policy is a third party policy, it does not cover the liability to gratuitous passengers, who are not carried for hire or reward. The learned counsel submits that the terms and conditions of comprehensive policy relating to private cars, cannot apply to third party policy. The learned counsel submits that it is an Act Only Policy and therefore, the Appellant / Insurer is not liable to pay the compensation more than Rs.1,00,000/- under the Personal Accident, for which the extra premium is accepted. The learned counsel in the alternate submits that the Appellant / Insurer may be liable to pay the compensation of Rs.1,00,000/- to the Respondent / Claimant in First Appeal No.2996 of 2013. So far as, other two appeals are concerned, the learned Member of the Tribunal has awarded the compensation less than of Rs.1,00,000/-, and

therefore, no interference is required in those two appeals.

5 The learned counsel in order to substantiate his contention, placed his reliance on the following cases:

a) ***Dr. T. V. Jose Vs. Chacko P. M. alias Thankachan and others***, reported in, ***AIR 2001 Supreme Court 3939***,

b) ***General Manager, United Insurance Co. Ltd. Vs. M. Laxmi and Ors***, reported in, ***AIR 2009 Supreme Court 626***,

c) ***New India Assurance Company Ltd. Vs. Lilabai Shrimant Misal & ors***, reported in, ***2015 (1) Bom.C.R. 620***.

6 The learned counsel for Respondents / Claimants submits that the primary liability to pay the compensation is of the owner or the driver of the vehicle involved in the accident and under the policy, the Appellant / Insurer is liable to deposit the amount under the award and recover the same from the Respondent / owner and driver. It is the liability of the Appellant / Insurer to pay the compensation and in case of breach of policy, the Appellant / Insurer can recover the same from

Respondent / owner or driver. The learned counsel submits that there is no breach of terms and conditions of the policy and the Appellant / Insurer has failed to substantiate the same. The learned Member of the Tribunal has therefore, rightly directed the Appellant / Insurer alongwith Respondent / owner to pay jointly and severally the amount of compensation as worked out by the Tribunal. No interference is required. All the appeals are liable to be dismissed.

7 The learned counsel for Respondents in order to substantiate his submissions, placed his reliance on the following cases:

a) ***New India Assurance Company Ltd. Vs. Kusum and others***, reported in, ***2010(1) Mh.L.J. 889***,

b) ***United India Insurance Co. Ltd. Vs. Sindhubai w/o Kondiram Darwante***, reported in, ***2010(3) Mh.L.J. 886***,

c) ***National Insurance Co. Ltd. Vs. Swaran Singh and others***, reported in, ***AIR 2004 Supreme Court 1531***,

d) ***Oriental Assurance Company Ltd. Vs. Pandit Nagorao Ade and others***, reported in, ***2010(6) Mh.L.J. 811***.

7-A. I have also heard the learned counsel for Respondent / owner who has adopted the submissions / arguments of the learned counsel for Respondents / Claimants.

8 On careful perusal of the pleadings and the evidence led by the respective Respondents / Claimants, it appear that on 17th May, 2009, all the Respondents / Claimants had been to village Limba Rui to attend one marriage ceremony and thereafter, started returning to their respective villages by occupying a jeep bearing registration No.MH-12-E-7524. In cross-examination, the Respondents / Claimants have admitted that in all there were 7 occupants in the jeep and they were travelling in the said jeep to attend the said marriage ceremony. They have further admitted in their cross-examination that the person, who has arranged the said ceremony told them to occupy the said jeep and accordingly, they started travelling in the said jeep. They have also admitted further in cross-examination that the said jeep was engaged by that person for carrying the persons, who had come to attend the said marriage. It is thus clear that the Respondents / Claimants were travelling in the said jeep as gratuitous passengers.

9 The Appellant / Insurer has examined Branch Manager Ravindra Kale and also produced on record the policy, which is duly

proved through this witness. The policy is marked as Exhibit – 47. On careful perusal of the policy Exhibit – 47, it appears that the premium is accepted for third party basic, Personal Accident to unnamed passengers Number 9, amount Rs.1,00,000/- per person, compulsory PA to Owner Cum Driver, amount Rs.2,00,000/- and WC to employee 1. Said witness Ravindra Kale, Branch Manager of the Appellant / Company has also deposed that the policy covers the risk towards the third party and the risk of the passengers in the jeep is covered to the extent of Rs.1,00,000/- by accepting extra premium thereof. It is thus clear that the terms and conditions of the comprehensive policy relating to private cars, cannot apply to third party person. It is also well settled that third party policy does not cover the liability of gratuitous passengers. In view of the same, the policy does not cover the liability of the occupants of the vehicle of jeep involved in the accident and thus, the Appellant / Insurer is not liable to pay the compensation. The learned Member of the Tribunal has not considered this important aspect and erroneously saddled the liability on the Appellant / Insurer to pay the compensation exceeding Rs.1,00,000/- in MACP No.41 of 2010, which is subject matter of First Appeal No.2996 of 2013.

10 In a case *Dr. T. V. Jose Vs. Chacko P. M. alias*

Thankachan and others (supra), relied upon by the leaned counsel for Appellant, in para 19 of the judgment, the Supreme Court has made the following observations:

> "**19.** In this case only the first sheet of the policy is on record. This clearly shows that the policy is a third party policy. The terms and conditions governing this Policy are not on record. What was shown to Court was terms and conditions of a comprehensive policy relating to private cars. These cannot apply to this policy. In the absence of terms and conditions governing this policy it is not possible to accept the submission of Mr. Iyer that this policy covered liability to occupants of the car. As has been set out hereinabove, the law on this subject is clear, a third party policy does not cover liability to gratuitous passengers who are not carried for hire or reward. The 8th Respondent company will, therefore, not liable to reimburse the Appellant."

11 In a case *General Manager, United Insurance Co. Ltd. Vs. M. Laxmi and Ors* (supra), relied upon by the leaned counsel for Appellant, in para Nos.8 and 9 of the judgment, the Supreme Court has made the following observations:

> "**8.** In United India Assurance Co. Ltd., Shimla v. Tilak Singh and Ors. (2006(4) SCC 404), it has been

noted as follows:

> "In our view, although the observations made in Asha Rani case (supra) were in connection with carrying passengers in a goods vehicle, the same would apply with equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant-Insurance Company that it owed no liability towards the injuries suffered by the deceased-Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."

9. In view of what has been stated by this Court in Asha Rani and Tilak Singh cases (supra), the order of the High Court is clearly unsustainable and is set aside and that of the MACT is restored."

12 In a case *New India Assurance Company Ltd. Vs. Lilabai Shrimant Misal & ors* (supra), this Court had an occasion to deal with the question of "Act Only Policy" and after discussing elaborately the case laws on this point, this Court held that the Insurer in the said case is not liable to pay the compensation.

13 The learned counsel for Respondents / Claimants submits that the Appellant / Insurer can be directed to pay the compensation and may recover it from the owner of the vehicle involved in the accident. In a case *United India Insurance Co. Ltd. Vs. Sindhubai w/o Kondiram Darwante* (supra) relied upon by the learned counsel for Respondents, in para 26 of the judgment by referring the judgment of the Division Bench, this Court has observed that no broad proposition can be laid down that in all the cases, the Insurer must be made to pay the entire compensation amount and then recover it from the owner of the offending vehicle. In all cases where the Insurer is held not liable, such a course cannot be adopted. It will depend upon the facts and circumstances of each case.

14 In the instant case, as per the contents of the insurance policy itself, the Appellant / Insurer is not liable to pay the compensation except the amount under “Personal Accident” for the passengers not exceeding Rs.1,00,000/-. Since the policy covers the risk of third party and as such the Claimants travelling in the vehicle involved in the accident cannot be treated as third party, no liability could be fasted on the Appellant / Insurer. In view of the above, in the facts and circumstances of the present case, the Appellant / Insurer cannot be directed to pay and satisfy the award first and then recover it

from the Respondent / owner. So far as liability to pay the compensation of Rs.1,00,000/-, the learned counsel for Appellant / Insurer has fairly admitted that for that reason, the Respondents/ Claimants need not take recourse to initiate other proceedings and the Appellant / Insurer can be directed to pay an amount of Rs.1,00,000/- as per the clause of "Personal Accident" inserted in the policy by accepting the extra premium. So far as other two appeals are concerned, the said course need not be adopted because the learned Member of the Tribunal has awarded the compensation, which is less than Rs.1,00,000/-. The Appellant / Insurer has not disputed the quantum so also the learned counsel appearing for the Respondent / owner.

15 In view of the above discussion, I proceed to pass the following order:

<u>O R D E R</u>

I. First Appeal No.2996 of 2013, is hereby partly allowed.

II. The judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 19th September, 2013 in MACP No.41 of 2010, is hereby modified to the following manner:

a) Respondent Nos.1 and 2 shall pay jointly and severally an amount of Rs.3,86,700/- (Rupees Three Lacs Eighty-Six Thousand and Seven Hundred only) inclusive of no fault liability to the Claimants alongwith future interest at the rate of 7% per annum from the date of filing of petition till full satisfaction of the award and Respondent No.3 / Insurer shall pay Rs.1,00,000/- to the Claimants alongwith future interest at the rate of 7% per annum from the date of filing of the petition till full satisfaction of the award.

b) The impugned judgment and award is quashed and set aside to the extent that Respondent No.3 / Insurer is held to be jointly and severally liable to pay the amount of compensation of Rs.3,86,700/- alongwith Respondent No.1 / owner.

c) Award be drawn up accordingly.

III. First Appeal No.2997 of 2013 and First Appeal No.2998 of 2013, are hereby dismissed with costs.

IV. The judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 21st September, 2013 in MACP No.42 of 2011 and judgment and award passed by the Motor Accident Claims Tribunal, Beed dated 21st September, 2013 in MACP No.141 of 2011, stand confirmed.

V. Needless to say that if the Appellant / Insurer has deposited the amount as per the earlier award, except Rs.1,00,000/-, the remaining amount shall be refunded to the Appellant / Insurer and if the Respondent / Claimant in MACP No.41 of 2010, has withdrawn the amount of Rs.1,00,000/- then in that event there would be no liability on the Appellant / Insurer to pay the compensation as per the modified award.

VI. All the appeals are accordingly disposed of.

VII. Pending civil applications stand disposed of.

[V. K. JADHAV, J.]

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