IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3274 OF 2015

RAMDAS VITTHAL ROKADE AND ANOTHER
VERSUS
ASHOK AMBADAS KAKADE AND OTHERS
...
Advocate for Appellants : Mr B S Shinde h/f S B Choudhari
Mr. A.S.Kulkarni h/f Mr A N Nagargoje Advocate for Respondent No.1.
Advocate for Respondent 2 : Mr P B Kadam h/f S J Salunke
Mr S K Bansod h/f Mr. R F Totala Adv For Resp 3
...
WITH
FA/3175/2015

GANESH BABAN RAUT
VERSUS
ASHOK S/O AMBADAS KAKADE AND OTHERS
...
Advocate for Appellants : Mr B S Shinde h/f S B Choudhari
Mr. A.S.Kulkarni h/f Mr A N Nagargoje Advocate for Respondent No.1.
Advocate for Respondent 2 : Mr P B Kadam h/f S J Salunke
Mr S K Bansod h/f Mr. R F Totala Adv For Resp 3
Mr A S Deshpande Advocate for Resp.
...
CORAM : V.K. JADHAV, J.
Dated: March 02, 2017
...

COMMON ORDER :-

1. Heard finally with consent at admission stage.

2. Being aggrieved by the judgment and award passed by the Member, Motor Accident Claims Tribunal Beed dated 8.9.2015 in MACP No.216/2013, the original claimant preferred First Appeal No.3274/2015 and being aggrieved by the judgment and award dated 9.9.2015 passed by the Member Motor Accident Claims Tribunal, Beed in MACP No.222/2013 the original claimant has also preferred the First Appeal No.3175/2015. Since both the appeals arises out of one and the same motor vehicular accident and judgment and award passed by the Tribunal though separately, are decided by this common order.

3. Brief facts, giving rise to the present appeals are as follows :-

On 19.5.2013 at about 08.00 am the appellant Ganesh was riding a motorcycle and deceased a 14 years boy was the pillion rider. Appellant Ganesh was his maternal uncle. On Beed-Ahmednagar road within the limits of village Yewalewadi, one Tata Magic Tempo bearing registration No.MH-16/AE-4175 owned by respondent no.1, driven by respondent no.2 and insured with respondent no.3 came from backside. Said Tata Magic tempo gave dash to the said motor cycle on its back side. In consequence of which deceased Sagar fell down on the road and died on the spot whereas appellant Ganesh sustained severe injuries.

4. The L.Rs of deceased Sagar and injured Ganesh approached to the Tribunal by filing two separate motor accident claim petitions that is MACP No.216/2013 and 222/2013 as aforesaid for grant of compensation under various heads. It has been contended in the death claim that deceased Sagar was student in 7th standard and he could have provided the parents needed assistance in their old age. They have claimed total compensation of Rs.2,50,000/-

5. Appellant original claimant Ganesh has contended that after accident he was shifted to Civil Hospital, Beed and therefrom to Noble Hospital, Ahmednagar. He was operated there for his head injury. He was also indoor patient for certain period in Jivan Jyoti Hospital. He has incurred huge medical expenses. It has been

contended that, the injuries sustained by him resulted into 100% permanent disablement and accordingly the appellant Ganesh has claimed the compensation of Rs.7.00 lacs.

6. In both the claim petitions, respondents no.1 and 2 strongly resisted the claim petitions by filing their separate written statements. It has been contended that the appellant Ganesh was riding the motorcycle on national high way in zig-zag manner. Said motorcycle ran over a pothole and thus rider of the motorcycle lost his control over the motorcycle and as such the accident had taken place. The appellant Ganesh himself is responsible for the accident.

7. Respondent no.2 driver has contended that he has driven the tempo carefully and after following traffic rules.

8. In both the claim petitions respondent no.3 insurer has strongly resisted the claim on the ground that the owner and insurer of the motorcycle though necessary party are not arrayed as respondents. It has

been contended that the driver of the tempo was not holding valid and effective driving licence at the relevant time. It has been contended that there was no valid permit and fitness certificate issued by the competent authority in respect of the said tempo and, as such there has been breach of terms and conditions of the policy.

9. In both the claim petitions claimants respectively adduced oral and documentary evidence in support of their contentions. Respondents have not adduced any evidence except respondent no.2. The respondent no.2 driver has examined himself on oath before the Tribunal. The learned Member of the Motor Accident Claims Tribunal, Beed by its impugned judgment and award as aforesaid partly allowed the MACP No.216/2013 (a death claim) and directed respondents no.1 and 2 to pay compensation of Rs.2,25,000/- jointly and severally inclusive of No Fault Liability amunt alongwith interest @ 7.5% p.a. The Tribunal has dismissed the petition as against respondent no.3 insurer. In MACP 222/2013 (personal injury claim) the

Tribunal has partly allowed the said claim petition and thereby directed respondents no.1 and 2 to pay jointly and separately an amount of Rs.4,40,000/- inclusive of amount of No Fault Liability alongwith interest @ 7.5% p.a. The learned Tribunal also dismissed the petition as against respondent no.3-Insurer. Hence, these two separate first appeals preferred by the claimants to the extent of quantum and also for exonerating the insurer from liability to pay compensation jointly and severally alongwith owner of the vehicle.

10. The learned counsel for the appellant in both the claims petitions submits that, the learned Member of the Tribunal has erroneously exonerated the respondent no.3-insurer from the liability to pay the compensation. Learned counsel submits that injured Ganesh and deceased Sagar were travelling on their motorcycle and from backside of the motorcycle dash was given by the said Tata Magic Tempo. In consequence of which, said Sagar died on the spot, whereas, claimant Appellant Ganesh sustained injuries and resultant permanent disablement. Deceased Sagar and injured Ganesh are

the third parties. So far as involvement of vehicle tempo in the accident is concerned, the learned Member of the Tribunal has also recorded finding in the affirmative and thereby held that the accident occurred on account of rash and negligent driving of the driver of the Tata Magic Tempo. Learned counsel submits that though respondent no.2 driver has admitted in his cross examination that there were 35 to 40 persons sitting in the tempo which is goods carrying vehicle, the appellant claimants being a third party in the said accident are not responsible for said breach of terms and conditions of the policy. Learned counsel submits that, the Tribunal ought to have fastened the liability on the respondent insurer alongwith the owner or in the alternate the Tribunal ought to have directed the respondent insurer to pay the compensation and then recover the same from the respondent owner.

11. Learned counsel for the appellant in order to substantiate his contentions places his reliance on the following cases :-

1. S.Iyyapan Vs. United India Insurance Company Ltd. reported in 2013 (6) Mh.L.J. 1
2. FA No.642/2010 decided on 7.4.2016 by this Court.
3. B.V.Nagraju Vs. M/s Oriental Insurance Co. Ltd., Divisional Officer, Hassan reported in 1996 ACJ 1178.
4. Amelendu Sahoo Vs. Oriental Insurance Company Ltd., reported in AIR 2010 SC 2090.
5. United India Insurance Co. Ltd., and others Vs. Meena Balkrushna Khandagale and others in FA No.14/2013 and 502/2014.
6. United India Insurance Co. Ltd., Vs. Vimal Narayanrao Nandanwar and others in FA No.70/1996.

12. Learned counsel for respondent owner submits that the respondent insurer cannot raise a ground that there is breach or failure on the part of the persons who were travelling on the motorcycle at the time of accident. The appellant Ganesh and deceased Sagar are not concerned whether there is breach of the policy or not. Even if there is breach, the same is directory in view of the judgment of the Supreme Court in case of Skandia Insurance Company Ltd. Vs. Kokilaben Chandravadan and others reported in 1987 (2) SCC 654 which has been further affirmed in Sohanlal's case. It is a statutory right of third party to recover the amount of compensation so awarded from the insurer. Learned counsel submits that the respondent owner has taken a

policy in respect of the motor vehicle tempo involved in the accident from the insurer after payment of the premium. Thus, respondent-insurer is under an obligation to pay compensation payable to third party on account of any injury or payable to the legal representatives of third party in case of a death of a third party caused by or arisen out of use of a vehicle at public place.

13. Learned counsel in order to substantiate his contentions places his reliance on following cases :-

1. Gulamhussen Mohmadbhai Kazi Vs. Jahur Suleman Luhar in FA Nos. 188/1983 and other matters.

2. United India Insurance Co., Ltd. Vs. Anubai Gopichand Thakare reported in 2008 ACJ 213.

14. Learned counsel submits that the respondent insurer has not raised a specific ground that 35 to 40 passengers were being carried out in the goods carriage vehicle at the time of accident and there has been a breach of conditions of the policy on that count. Respondent insurer has raised a defence that there was no valid permit and fitness certificate issued by the

competent authority in respect of the tempo, in addition to the defence that driver of the tempo was not holding valid and effective driving licence at the relevant time. The learned Member of the Tribunal has recorded findings in the negative to the issue framed in consonance with the defence raised by respondent insurer and held that respondent no.3 insurer has failed to prove the aforesaid defences. Learned counsel submits that respondent no.3 insurer is thus liable to pay the compensation jointly and severally alongwith respondent owner and the learned Member of the Tribunal has erroneously exonerated the respondent insurer from the liability to pay the compensation.

15. Learned counsel for respondent No.3 insurer submits that respondent no.3 insurer has raised a specific defence that said vehicle tempo was plying on the road without valid permit and fitness certificate issued by the competent authority in respect of the tempo and also against terms and conditions of the permit and policy. Learned counsel for respondent insurer submits that as admitted by respondent driver

of the aforesaid vehicle tempo there were 35 to 40 passengers were travelling in a goods carriage tempo and thus the breach of the terms and conditions of the policy is apparent on the face of record. Learned counsel submits that though there is no issue framed by the Tribunal to that effect, the evidence on record is sufficient and this Court may determine the case finally. Learned counsel submits that the Tribunal has rightly exonerated the respondent no.3 insurer from the liability to pay the compensation. No interference is required. There is no merit in the appeal and the appeal is thus liable to be dismissed.

16. It appears from the pleadings of respondent no.3 insurer that a plea has been raised to the effect that, the aforesaid vehicle tempo was plying on the road without valid permit and fitness certificate issued by the competent authority in respect of the tempo and against terms and conditions of the policy. Admittedly, tempo which is a goods carriage vehicle was being used for carrying 35 to 40 passengers at the time of accident. There is evidence on record in terms of the admissions

given by the respondent driver and in view of the same, there has been breach of the terms and conditions of the permit as well as policy.

17. The appellant Ganesh was riding the motorcycle at the time of accident and deceased Sagar a 14 years old boy was the pillion rider on his motorcycle. On National High Way the aforesaid tempo given dash to the motorcycle on its backside. Thus, they are not concerned whether there is breach of the policy or not. They have not contributed anything in connection with the accident. There was no breach of the conditions of the policy by them.

18. In a case Gulamhussen Mohamadbhai Kavi Vs. Jahur Suleman Luhar (Gujrat High Court) after giving reference to the various cases including the case of Skandia Insurance Company Ltd. Vs. Kokilaben Chandravadan and others reported in 1987 (2) SCC 654 the Supreme Court held that, the third party is entitled to claim the damages against the insurance company and now owner, driver and insurance company are

jointly and severally liable to pay the compensation in the appeals.

19. In a case S. Iyyapan Vs. United India Insurance Company Ltd., supra) relied upon by the learned counsel for the appellant, the Supreme Court, in paragraph no.17 and 18 of the judgment has made following observations :-

> 17. The heading "Insurance of Motor Vehicles against Third Party Risks" given in Chapter XI of the Motor Vehicles Act, 1988 (Chapter VIII of 1939 Act) itself shows the intention of the legislature to make third party insurance compulsory and to ensure that the victims of accident arising out of use of motor vehicles would be able to get compensation for the death or injuries suffered. The provision has been inserted in order to protect the persons travelling in vehicles or using the road from the risk attendant upon the user of the motor vehicles on the road. To overcome this ugly situation, the legislature has made it obligatory that no motor vehicle shall be used unless a third party insurance is in force.
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> 18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a

> third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

20. In the aforesaid case, the supreme Court held that, in any case it is statutory right of third party to recover the amount of compensation so awarded from the insurer. It is for the insurer to proceed against insured for recovery of the amount in the event there has been violation of any conditions of the insurance policy.

21. In a case B.V. Nagaraju Vs. M/s. Oriental Insurance Company Ltd., (supra) in this case the respondent insurance company denied the liability on the ground that goods vehicle was used for the purpose of carrying passengers. The Supreme Court while referring the observations made in Skandia Insurance Company Ltd. Vs. Kokilaben case held that terms of the policy of the insurance need to be considered strictly and policy must be read down so as to serve the main purpose of the policy. This Court has also taken similar view in the aforesaid first appeals by referring the

observations of Supreme Court in Skandia Insurance Company Ltd. Vs. Kokilaben's case and further S.Iyyapan's case.

22. In view of the above discussion and the observations made by the Supreme Court and by the various courts, it is thus clear that it is a statutory right of third party to recover the amount of compensation so awarded from the insurer. Respondent insurer may proceed against insured owner for recovery of the amount as there has been violation of the conditions of the insurance policy.

23. So far as the quantum of the compensation is concerned, the learned counsel for the appellant has not made any submission on that. Otherwise also, the learned Member of the Tribunal has awarded just and reasonable compensation in both the claim petitions.

24. So far as exoneration of the respondent insurer from the liability to pay compensation is concerned, the same is liable to be quashed and set aside with modification that the respondent insurer shall pay the

entire amount under award and recover the same from the respondent owner for which no separate proceeding is required to be initiated. Hence, I proceed to pass the following order.

O R D E R

I] First Appeal No.3274/2015 [Ramdas Vithal Rokade and another Vs. Ashok Ambadas Kakade and others] and First Appeal No.3175/2015 [Ganesh Baban Raut Vs. Ashok Ambadas Kakade and others] are hereby partly allowed. No costs.

II] The judgment and award passed in M.A.CP. No.216/2013 (Ramdas Rokade Vs. Ashok Kakade] is hereby quashed and set aside to the extent of dismissal of the petition as against respondent no.3-Insurer and the judgment and award passed in claim petition No.216/2013 is hereby modified in the following manner :-

a] The respondents no.1 and 2 shall jointly and severally pay compensation of Rs.2,25,000/- (Two Lakhs and Twenty Five Thousand) to the claimants which shall be inclusive of 'No Fault Liability' amount of Rs.50,000/- in MACP No.216/2013 with simple interest @ 7.5% per annum from the date of application till its realization, however, respondent no.3-insurer shall pay the entire amount under award with interest and then recover the same from the respondent owner for which no separate proceeding are required to be initiated.

III] The judgment and award passed in M.A.CP. No.222/2013 (Ganesh Raut Vs. Ashok Kakade) is hereby quashed and set aside to the extent of dismissal of the petition as against respondent no.3 Insurer and the judgment and award passed in MACP No.222/2013 (Ganesh Raut Vs. Ashok Kakade) is hereby modified in the following manner :-

b] The respondents no.1 and 2 shall jointly and severally pay compensation of Rs.4,40,000/- (Rs. Four Lakhs Forty Thousand only) to the claimants which shall be inclusive of 'No Fault Liability' amount of Rs.25,000/- in MACP No.222/2013 with simple interest @ 7.5% per annum from the date of application till its realization, however, respondent no.3-insurer shall pay the entire amount under award with interest and then recover the same from the respondent owner for which no separate proceeding are required to be initiated.

III. Both the first appeals accordingly disposed of.

IV. Award be drawn up accordingly.

V. Pending Civil Application, if any, accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

aaa/-