

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.177 OF 2014

Raju Narayan Ghodekar
Age : 30 yrs. Occu.Cleaner,
R/o.Dadh Bk. II, Tal Rahata,
Dist. Ahmednagar.
At present R/o. Eklahare
Tal. Shrirampur, Dist. Ahmednagar

= **APPELLANT**

VERSUS

1. Santoshkumar Vaijinath Patel
Age: Major, Occu. Truck Driver,
R/o. Ke Opp. New Bharat
Desek Garej, Otur
Tq. Junnar, Dist. Pune,
2. Sou. Rajeashri Sadanand Mahabare
Age : Major, Occu. Truck Owner
R/o. Bodake Nagar, At Post
Tq. Junnar, Dist. Pune
3. The Branch Manager
The New India Assurance Co. Ltd.,
Branch Shrirampur, Shivaji Cross Road,
Dr. Chatu Phale Marg
At Post. Tq. Shrirampur,
Dist. Ahmednagar

= **RESPONDENTS**

Mr.Rahul A.Tambe, Advocate for Appellant;

Mr.YS Choudhari, Adv for Respondent No.2;

Mr.AB Kadethankar, Adv. For Resp.No.3.

CORAM : P.R.BORA, J.

DATE : 23rd August, 2018

ORAL JUDGMENT:

1) Heard Shri Tambe, learned counsel appearing for appellant; Shri Shinde, learned Counsel holding for Shri YS Choudhari, learned counsel for Respondent No.2; and Shri Kadethankar, learned counsel for Respondent-No.3-Insurance company.

2) Appellant has filed the present appeal challenging the judgment and award passed in MACP No.183/2007 by Member, Motor Accident Claims Tribunal, at Shrirampur (hereinafter referred to as the Tribunal) on 10.10.2013.

3) The learned Counsel for the appellant at the outset made it clear that the appellant is restricting his challenge to the impugned Judgment only to the extent it has limited the liability of the insurance Company to Rs.50,000/-

4) The present appellant had filed the aforesaid claim petition, claiming compensation on account of injuries caused to him in a vehicular accident happened on 27th January, 2007. As per the contention of the appellant, he was serving as a cleaner at the relevant time on the truck bearing registration No.MH-20-A 6744 and the said truck met with an accident on 27th January, 2007, wherein he was severely injured and incurred permanent disability. Learned Tribunal though found the appellant entitled for the total compensation of Rs.8,04,926/-, held the insurance company liable to pay the compensation only to the extent of Rs.50,000/- and directed the driver and owner of the offending vehicle to jointly and severally pay the remaining amount of Rs.7,54,926/-.

5) The learned counsel submitted that the order so passed is apparently illegal and unsustainable. The learned counsel further submitted that the policy of the offending vehicle was admittedly comprehensive package

policy and as such, unlimited liability was covered under the said policy. The learned counsel, placing reliance on the judgment passed by this Court in First Appeal No.2057/2010 (Popat Kachru Kedar Vs. Smt. Jyoti w/o Santosh Kedar @ Jyoti w/o Annasaheb Garje and Ors.), and more particularly, relying on the observations made in Para Nos.10 to 14 of the said judgment, submitted that in view of the IRDA Circular, referred in the aforesaid judgment, liability of the insurance company could not have been restricted to Rs.50,000/-. The learned counsel further relied on the subsequent judgment of this Court in First Appeal No.3398/2011, wherein the view taken by this Court in FA No.2057/2010 has been reiterated. The learned counsel, therefore, prayed that the insurance company shall be held jointly and severally liable to pay the entire amount of compensation, as determined by the Tribunal and the impugned judgment may be modified accordingly.

6) Shri Choudhari, learned counsel appearing for Respondent No.2, supported the contentions raised by the learned counsel for the appellant. The learned counsel submitted that in view of the comprehensive policy purchased by the appellant for the offending vehicle, the insurance company was liable to indemnify the owner in toto.

7) Shri Kadethankar, learned counsel appearing for Respondent No.3-insurance company, submitted that the judgments relied upon on behalf of the appellant may not apply to the facts of the present case. The learned counsel further submitted that the judgment of the Delhi High court in the case of Yashpal Luthra & Anr. Vs. United India Insurance Co. Ltd. And Anr. in M.A.C. Application No.176/2009 which has been referred by this court in the judgments which are relied upon by the appellant, is challenged before the Hon'ble Apex court and the said petition is still pending. The learned counsel,

therefore, prayed for passing appropriate orders.

8) The only question which falls for consideration in the present appeal is whether the order passed by the tribunal, restricting the liability of the insurance company to pay compensation only to the extent of Rs.50,000/-, though it has held the appellant entitled for the total compensation of Rs.8,04,926/-, can be sustained.

9) I have carefully perused the judgment relied upon by the appellant. There cannot be a dispute as about the law laid down by this court in the aforesaid judgment. The IRDA circular pertains to the liability to compensate for the death or injury of the occupants in a private car or pillion rider on two-wheelers. In the instant matter, the insured vehicle is admittedly a goods truck. It has to be, therefore, examined whether the policy adopted in the said I.R.D.A. Circular would also apply for the occupants in the goods

truck or goods-carriage.

10) After having gone through the record of the case and more particularly the insurance documents placed on record, it is, however, apparently revealed that the tribunal has manifestly erred in restricting the liability of the insurance company to the extent of Rs.50,000/-.

11) The material on record reveals that the insurance company had not raised any such defence of limited liability in the written statement filed by it though the claim petition was opposed by it on many other grounds. Since there was no such specific plea raised by the insurance company in its written statement, obviously no such issue was framed by the learned Tribunal. Perusal of the impugned judgment reveals that implicitly relying on the evidence of Khushiram Sharma, the witness, who deposed on behalf of respondent – insurance company, the tribunal

recorded a finding that the liability of the insurance company was limited to the extent of Rs.50,000/-. The tribunal has relied upon the document at Exhibit-55 and Exhibit-61.

12) I carefully perused the evidence of the said witness recorded by the tribunal at Exhibit-59. The record reveals that the learned counsel appearing for the respondent insurance company had sought permission to re-examine the said witness after his cross-examination by the claimants was over. The re-examination was permitted by the Tribunal. In the further evidence, the said witness viz. Khushiram Sharma has testified that the insurance policy which was at Exh.55, was incomplete and since he was unable to state as to who had signed the said policy, he is producing on record the original insurance policy. The production of the said policy was permitted by the tribunal and the document so produced was marked at Exh.61. It was the contention of the witness Khushiram Sharma that

in terms of the said policy at Exh.61, the liability of the insurance company was limited to the extent of Rs.50,000/-

13) The discussion made by the Tribunal in its impugned judgment demonstrates that the fact so deposed by witness Khushiram Sharma, was fully accepted by the tribunal. However, after perusal of the documents at Exh.55 as well as Exh. 61, it is explicitly revealed that the tribunal was misled by the witness examined by the insurance company and the tribunal also, could not realize the fallacy and without any scrutiny accepted the said document at Exh.61 to the policy of insurance.

14) It is not in dispute that the policy of the offending vehicle was comprehensive package policy. I have carefully perused the document at Exh. 61. It is the document in respect of confirmation of the policy of the insured vehicle, as required under Section 64-VB of the

Insurance Act, 1938. Exhibit-61 was described by witness Khushiram as the copy of the original policy. It was specifically deposed by witness Khushiram in his re-examination that he is producing on record the original policy and thereafter the same was marked at Exh.61. It is really surprising that the document of 64-VB confirmation was described by the witness examined by the insurance company as the original insurance policy.

15) It is significant to note that the document at Exhibit-61 is consisting of three pages. Perusal of the impugned judgment reveals that the tribunal has recorded a finding as about the restricted liability of the insurance company to the extent of Rs.50,000/- on the basis of the averments at page No.2 of the said document. From the contents of the said page No.2, it is evident that it is not the part of the insurance policy, but some different document having no nexus with the insurance policy. Unfortunately,

in the cross-examination of witness Khushiram , nothing has been brought on record by the learned counsel who was appearing for the original claimant. The plain reading of the said document demonstrates that it pertains to the O.D. claim lodged by the insured in relation to the accident happened on 27th January, 2007 out of which the instant claim petition had arisen. The 3rd page of Exhibit-61 is the Certificate of insurance pertaining to the insured vehicle. The said document was already there on record at Exh. 55. In the cross-examination t witness Khushiram admitted that page No.2 of Exhibit-55 was inadvertently not filed along with the document at Exh.61.

16) After having perused the documents, as aforesaid, no doubt has remained that the tribunal was misled by the witness examined by the insurance company and was made to believe that page No.2 of Exh.61, was the part of the insurance policy and that it was demonstrating

that liability of the insurance company was limited to the extent of rs.50,000/-. The insurance policy was admittedly purchased by the insured prior to 22nd July, 2006. In the said policy, in no case, there was any possibility of containing any such document at page No.2 of Exh. 61, wherein date of loss is mentioned as 27th January, 2007. The document at Exh.55 is the Certificate of insurance pertaining to the insured vehicle. The second page of it provides the particulars of premium paid by the insured, which are thus, -

B.T.P. - BASIC	3,580.00
Compulsory PA to Owner Cum Driver Amount 20000	100.00
WC to employee 4	100.00
	3,780
GROSS (B) :	5,853
GROSS OD & TP :	
Net Premium	5,853
Service Tax 12.24%	716
Net Amount Payable (Rounded 0	6,569

17) As I noted herein above, the document at Exh.55 shows that the policy purchased for the insured vehicle was a comprehensive package policy. The contents of the insurance policy clearly demonstrate that the risk of four employees was covered under the said policy. In the document of policy, it is nowhere mentioned that the liability of the insurance company was limited to the extent of Rs.50,000/- only. The learned counsel for the insurance company also could not bring to my notice any such clause or any such averment in the insurance policy or in the insurance cover note limiting the liability of the insurance company to the extent of Rs.50,000/- only. It is thus evident that because of the mis-representation resulting in mis-interpretation of the document at Exh.61, the learned tribunal did restrict the liability of the insurance company to the extent of Rs.50,000/- though it has held the appellant claimant entitled for the total compensation of Rs.8,04,926/-.

18) As noted by me earlier, the judgment relied upon by the appellant in the case of Popat Kachru delivered by the learned Single Judge of this Court, though deals with the risk of the occupant in the private car, even in that case, the issue which was for consideration was whether under the comprehensive package policy the insurance company is liable to compensate for the death or injury of the occupant in a private car and whether considering the terms of the policy risk of liability can be said to be limited to the extent of Rs.50,000/- only and the learned Single Judge by giving elaborate reasons and referring to the relevant IRDA circulars, had set aside the judgment of the tribunal impugned in the said matter, wherein also the liability of the insurance company was restricted to the extent of Rs.50,000/-. The same analogy may apply in the present case also.

19) The policy of the insured vehicle being comprehensive package policy, in view of the

provisions under Section 147 of the Motor Vehicles Act, 1988, the risk of the deceased cleaner being carried in the offending vehicle, was statutorily covered by the said policy. In the circumstances, the liability of the insurance company could not have been limited to the extent of Rs. 50,000/-. The insurance company has to be held liable to pay to the claimant the entire amount of compensation as has been determined by the Tribunal jointly and severally with the insured.

20) Before concluding the judgment, I find it necessary to state that the officers of the Insurance companies and counsel appearing for the insurance companies shall ensure that no false defences are raised and no attempt is made of adducing any misleading oral or documentary evidence, as has been noticed in the present matter, since any such attempt would ultimately result in increasing liability of the insurance companies.

21) For the reasons stated above, I am inclined to allow the present appeal. In the result, following order is passed, -

ORDER

i) The order passed by the Motor Accident Claims Tribunal in MACP No. 183/2007, restricting the liability of the insurance company to the extent of Rs.50,000/- only, is quashed and set aside;

ii) It is held that the owner of the vehicle and the insurance company are jointly and severally liable to pay the amount of compensation, as determined by the Tribunal to the extent of Rs.8,04,926/- to the appellant claimant inclusive of the compensation paid under NFL along with interest @ 9% p.a. from the date of the claim petition till actual realization thereof;

iii) Deficit court fees, if any, be paid by the appellant claimant;

- iv) Award be drawn accordingly;
- v) Pending civil application, if any,
stands disposed of.

(P . R . BORA)
JUDGE

bdv/Jt.
Kotgire/qtn.