

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

First Appeal No. 0448 of 2007

District : Beed

The United India Insurance
Company Ltd., Through its
Divisional Office,
Divisional Manager,
United India Insurance Company,
Osmanpura, Aurangabad.

.. Appellant
(Original
respondent
no.03)

versus

1. Hajrabi w/o. Sk. Laikoddin,
Age 45 years,
Occupation Household,
R/o. Mominpura, Beed,
District Beed.
2. Sk. Sadeq s/o. Sk. Laikoddin,
Age 24 years,
Occupation Labour,
R/o. as above.
3. Sk. Asef s/o. Sk. Laikoddin,
Age 20 years,
Occupation Education,
R/o. as above.
4. Sk. Wasimoddin
s/o. Sk. Sirajoddin,
Age 50 years,
Occupation Business and
owner of motorcycle,
R/o. Azizpura, Beed,
Taluka & Dist. Beed
(Owner of Motorcycle
Hero Honda bearing regn.
No. MH-21/F-5086)

.... Contd.

5. Sk. Naim s/o. Ahmedoddin,
Age 30 years,
Occupation Fitter,
R/o. Gandhinagar, Beed
(Driver of motorcycle -
Hero Honda).

.. Respondents
(Nos.01 to 03 -
Original
claimants &
Nos.04 & 05 -
Original
respondent
nos.01 & 02)

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Mr. S.V. Kulkarni, Advocate, for the appellant.

*Ms. A.N. Ansari, Advocate, for respondent
nos.01 to 03.*

Respondent nos.04 and 05 served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

**Date of reserving
the judgment : 27th April 2018.**

**Date of pronouncing
the judgment : 16th July 2018.**

JUDGMENT :

01. Present appeal has been filed by the Insurance Company - original respondent no.03, challenging the judgment and award passed in Motor Accident Claim Petition No. 045 of 2005, by Member of the Motor Accident Claims Tribunal, Beed, on 18.01.2007, whereby, in all compensation of Rs. 3,21,500/-, inclusive of amount of Rs. 50,000/- towards no fault liability along with interest was awarded and the present appellant as well as respondent nos.04 and 05 were held jointly and

severally liable to pay the said amount of compensation.

02. The claimants - present respondent nos.01 to 03 had come with a case, that the deceased Shaikh Laikoddin Shaikh Afzaloddin was the husband of claimant no.01 and father of claimant nos.02 and 03. Deceased Shaikh Laikoddin had gone to Majalgaon to meet his employer at about 06.00 p.m. on 21.08.2004. He had gone on Hero Honda motorcycle bearing registration no. MH-21/F-5086 driven by one Sk. Naim Fitter - present respondent no.05. The said vehicle belong to original respondent no.01 - present respondent no.04. The said vehicle was insured with present appellant - original respondent no.03. Original respondent no.02 drove the vehicle in rash and negligent manner, as a result of which the tyre of the motorcycle got burst and both driver as well as pillion rider fell down. Deceased had sustained serious injuries. He was admitted in Civil Hospital, Beed, and then was referred to Dhoot Hospital, Aurangabad. However, he succumbed to the injuries on 23.08.2004. First information report was lodged with Police. Prior to that, inquest panchanama and post mortem was executed. An offence punishable under Sections 279 and 304A of the Indian Penal Code came to be registered against original respondent no.02 vide Crime No. 90/2004. It was also contended that deceased Sk. Laikoddin was getting salary of Rs. 3,000/- per month and Rs. 50/- per day as Bhatta on tour. The claimants had claimed amount of Rs.

3,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988 [**For short, "M.V. Act"**].

03. The claim was resisted by respondent nos.01 and 02 by filing written statement at Exhibit 17 and by respondent no.03 at Exhibit 17. They all have denied the allegation that the respondent no.02 was rash or negligent while driving the motorcycle. The Insurance Company, in addition, has taken a defence that since the deceased was a pillion rider, his risk was not covered as per the terms and conditions of the insurance policy and therefore, the Insurance Company is not liable to pay any amount of compensation. Respondent no.02 was not holding a valid and effective driving license to drive the said motorcycle on the date of the accident and therefore, on this count also, the Insurance Company cannot be held vicariously liable to pay the compensation.

04. Taking into consideration the rival pleadings, issues came to be framed and evidence was led by the claimants. After hearing both sides, the learned Tribunal held respondent nos.01 to 03 liable to pay compensation to the claimants jointly and severally. It was directed that amount of Rs. 2,71,500/-, which was excluding the amount of Rs. 50,000/- towards '*no fault liability*' along with interest be given from the date of the petition.

05. The Insurance Company is mainly challenging its liability to pay the compensation under the

circumstances and taking into consideration the defence that was raised.

06. Heard learned Advocate Shri S.V. Kulkarni appearing for the appellant - original respondent no.03. Heard learned Advocate Ms. A.N. Ansari for respondent nos.01 to 03 - original claimants. Though respondent nos.04 and 05 were served, they failed to appear through Advocate.

07. Taking into consideration the controversy involved, following points arise for determination Findings and reasons for the same are as follows.

Sr. No.	Point	Answer
1.	Whether respondent no.03 - Insurance Company was jointly and severally liable to pay amount of compensation to the claimants as the deceased was a pillion rider and the risk was not covered.	In the affirmative.
2.	Whether respondent no.03 - Insurance Company deserves to be absolved from its liability to pay the compensation on the ground that the driver of the offending vehicle had no valid and effective driving license to drive the motorcycle on the date of the accident.	In the negative.

08. As regards point no.01, it has been vehemently argued on behalf of the appellant, that a specific defence was taken in the written statement

by the Insurance Company at para 33, that the risk of the deceased was not covered in the policy. The deceased was pillion rider and therefore, the Insurance Company cannot be saddled with the compensation. Specific issue was framed by the learned Tribunal to that effect. Attested copy of the cover note was produced at Exhibit 29. It was observed by the Tribunal, that it is not mentioned specifically that the cover note does not cover the risk of the pillion rider. In fact, in the said cover note, the account of the fact will be given of the factors which are covered under the policy. It was not necessary for the Insurance Company to lead any specific evidence either oral or documentary, in order to prove the said fact.

09. In support of his submission, learned Advocate for the appellant relied on the decision of this Court in the case of *New India Assurance Co. Ltd. Vs. Sukhdeo & others* [2003 (1) T.A.C. 233 (Bom.)]. In this case, reliance was placed on a decision of Division Bench in the case of *New India Assurance Company Vs. Babasaheb Anna Mali & others* [2001 (4) Mh.L.J. 562], wherein it was held that a pillion rider on a motorcycle, which is covered under third party insurance policy, is not a third party and, therefore, insurer cannot be saddled with no fault liability in respect of the pillion rider. It has been submitted that when even *no fault liability* has not been saddled, even final amount of compensation also cannot be saddled.

10. Per contra, it was argued by the claimants in support of the reasons those have been given by the Tribunal, that the motorcycle can accommodate two persons. This should be borne in mind by the Insurance Company and therefore, it cannot be said that the risk of the pillion rider is not covered.

11. It is to be noted that the attested copy of the cover note Exhibit 29 is along with the schedule of premium and it has been mentioned that amount of Rs. 160/- is charged towards basic premium and amount of Rs. 50/- is charged towards workman's compensation to two employees. The cover note makes a specific mention about limitation as to use but there is no specific mention in the negative terms that the risk of the pillion rider is not covered. The decision in the case of *Babasaheb Anna Mali (supra)* given by the Division Bench of this Court clarifies that a pillion rider cannot be termed as third party. The deceased was travelling on the same vehicle and therefore, he cannot be a '*third party*'. It is mandatory for the Insurance Company to cover the risk of a third party when a customer approaches it for insurance of the vehicle. When a separate premium regarding third party is not charged, we cannot say that the risk of pillion rider was covered under Exhibit 29. The ratio laid down in both the decisions, above said, is applicable here. When the risk of a pillion rider is not covered under any insurance policy, then the

Insurance Company cannot be saddled with the amount of compensation. As aforesaid, both the authorities are in respect of payment of amount under *no fault liability*. When even the amount under *no fault liability* cannot be saddled on the Insurance Company. The final amount also cannot be saddled on the said statutory defence. Point no.01 is therefore, answered in the affirmative.

12. As regards point no.02, another specific defence was taken by the Insurance Company, that the respondent no.02 was not holding valid and effective driving license on the date of the accident. However, no specific evidence on this point has been led by the Insurance Company. Perusal of the FIR Exhibit 24 would also show that respondent no.02 was prosecuted for not holding license. The claimants have not produced copy of the charge-sheet nor it was also produced by the Insurance Company. Therefore, when there was scope to bring the requisite evidence on record, the Insurance Company failed to do so. Under such circumstance, the said point cannot be raised. Therefore, point no.02 is answered in the negative.

13. One more ground has been raised, that the petition was not maintainable under Section 166 of the M.V. Act. Learned Advocate appearing for the appellant has relied on the decision of Himachal Pradesh High Court in the case of *Oriental Insurance*

Company Ltd. Vs. Brahmi and others [2017(2) T.A.C. 179 (H.P)], wherein it has been held that when deceased himself was driving the offending vehicle at the time of accident and no plea of rash and negligent driving was taken by the legal representatives of the deceased, which was *sine qua non* for maintaining the claim, the claim petition under Section 166 of the M.V. Act is not maintainable. Here, in this case, the deceased was pillion rider and therefore, when the facts are different, the Insurance Company cannot rely upon the said decision. Here, the contention of the claimants was that the respondent no.02, who was driving the vehicle at the relevant time, was rash and/or negligent.

14. Taking into consideration the answer to the points, it can be concluded that the appellant - Company is not liable to indemnify owner for the death of pillion rider since his risk was not covered under the policy Exhibit 29 (Deceased was not otherwise covered under the Workmen's Compensation Act). He can be said to be a '*gratuitous passenger*' at the relevant time. So also, the driver i.e. respondent no.02 was not the owner of the vehicle and therefore, claim of the claimant granted against the appellant - Insurance Company cannot be sustained. The said order is required to be modified.

15. Now, it is to be noted in view of my finding to point no.01, that the Insurance Company ought not to have been saddled with the amount of compensation

since the risk of the pillion rider was not covered. The said finding to issue no.02 given by the Tribunal is required to be set aside. The entire amount of compensation, whatever was ordered by the Tribunal, was deposited in this Court and by order passed on 14.12.2007 in Civil Application No. 9108 of 2007, this Court permitted the claimants to withdraw amount of Rs. 1,00,000/-. The remaining amount to the tune of Rs. 1,71,500/- was to be invested with State Bank of Hyderabad. Earlier, the Insurance Company has deposited the amount under *no fault liability* and it was withdrawn by the complainant. So also, as aforesaid, the amount of Rs. 1,00,000/- has been withdrawn by them under the permission of this Court. Taking into consideration the economic background of the original claimants, it will not be appropriate to pass an order of recovery from them regarding the said amount. It would be in the interest of justice to give liberty to the present appellant - Company to recover the entire amount which it has paid / deposited towards the impugned award from the original respondent nos.01 and 02.

16. In the result, following order is passed :

(a) The appeal is hereby partly allowed.

(b) The order / award passed by the Member of the Motor Accident Claims Tribunal, Beed, in Motor Accident Claim Petition No. 45 of 2005, on 18.01.2007 is hereby modified as follows :-

" Respondent nos.01 and 02 shall jointly and severally pay amount of Rs. 2,17,500/- (Rs. 3,21,500/- minus Rs. 50,000/- towards *no fault liability*) along with interest thereon at the rate of 9 percent per annum from the date of institution of the claim i.e. 28.02.2005 till the date of award. The claim against respondent no.03 stands dismissed. Respondent no.03 is at liberty to recover the amount which has been deposited / paid by it to the claimants towards *no fault liability* and towards the main award, from respondent nos.01 and 02, together with interest at the rate of 6 percent per annum from the date of the award till its realization. "

(Smt. Vibha Kankanwadi)
JUDGE

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