IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 830 OF 2007

New India Assurance Co. Ltd.
Divisional Office No. I, Adalat Road,
Aurangabad.
Through its Divisional Manager,
Dy. Manager, by name :
Hiralal s/o Namdeo Vishpute,
Age : 52 years Occu.: Service,
R/o.: Aurangabad. **Appellant**.

Versus

Younus Ahmed Shaikh
Age : 35 yrs, occu.: Rikshaw owner and driver,
R/o.Ashok Nagar, Shrirampur,
Tal. Shrirampur, Dist. Ahmednagar. **Respondent**.

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Mr. M. M. Ambhore, Advocate for the appellant.
Mr. P. F. Patni, Advocate for the respondent .

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CORAM : SUNIL K.KOTWAL, J.
DATED : 6th DECEMBER, 2018

ORAL JUDGMENT.

1. This appeal is preferred by New India Assurance Company Limited, Aurangabad against judgment and award passed by Motor Accident Claims Tribunal, Shrirampur, District : Ahmednagar (hereinafter referred to as “Tribunal”) in

Motor Accident Claim Petition No.25 of 2003, awarding compensation of Rs. 58,000/- to the original claimant under section 163-A of the Motor Vehicles Act, 1988 (hereinafter referred to as “ M. V. Act”)

2. Respondent is the original claimant. The appellant is the Insurance Company of the vehicle Rickshaw bearing No. MCN 5400 involved in the accident.

3. Hereinafter the parties are referred to by their status in the original claim petition.

4. The facts leading to institution of this appeal are that, on 20.09.1997 the claimant, who was the owner of Rickshaw bearing No. MCN-5400 was driving the said Ricksahw by Goverdhan to Ashok Nagar road. At that time the Rickshaw turned turtle as a stray dog darted in front of the Rickshaw. In that accident, claimant sustained fracture injury. In the result, claim petition was filed before the Tribunal under Section 163-A of the M. V. Act.

5. By filing written statement, the Insurance Company opposed the claim petition on the ground that risk of the owner and driver is not covered under the terms and conditions of policy

of insurance.

6. Learned Tribunal held that the policy covers the risk of owner of the offending vehicle and in the result, compensation of Rs.58,000/- was awarded.

7. Heard Mr. M. M. Ambhore, learned counsel for the appellant-Insurance Company and Mr. P. F. Patni, learned counsel for the respondent-claimant.

8. Learned counsel for the appellant submits that the policy of the offending vehicle being 'Act only policy', the risk of the owner of the Rickshaw was not covered and no extra premium was paid by the claimant to cover the risk of owner. He submits that it was a third party policy. He has placed reliance on the cases of "**New India Assurance Company Limited Vs. Prabha Devi and Others" (2013 AIR SCW 3779)**, **"Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha and Others (AIR 2007 Supreme Court 1054)** and **"Dhanraj Vs. New India Assurance Co. Ltd and another" (AIR 2004 Supreme Court 4767)**.

9. Learned counsel for the respondent submits that the

policy shows that premium was paid for three passengers and one driver, and therefore, when the claimant was driving the Rickshaw at the time of accident, his case is covered under the policy of insurance, though he was the registered owner. He placed reliance on "**United India Insurance Co. Ltd. Vs. Sunanda wd/o Ramesh Dhumone and others" [2007(3) Mh.L.J. 256]**.

10. The petition before the Tribunal being filed under Section 163-A of the M. V. Act, negligence of the driver of Rickshaw is irrelevant. However, the point in debate is whether the policy of the insurance of the offending vehicle covers the risk of the claimant, who was the registered owner and who was driving the Rickshaw at the time of the accident.

11. After going through the policy of the insurance, it emerges that it is a 'Policy A' i.e. 'act only' policy. Therefore, obviously, it is third party policy, which does not cover the risk of owner and driver. Though policy shows that sitting capacity of the insured vehicle was 3 + 1, it does not mean that this policy covers the risk of the owner. In the cases of **New India Assurance Company Limited Vs. Prabha Devi** (supra),

Oriental Insurance Co. Ltd. Vs. Smt. Jhuma Saha (supra) and **Dhanraj Vs. New India Assurance Co. Ltd.** (supra), it is settled that under 'act only' policy, the risk of the owner of the vehicle is not covered. Therefore, insurer is not liable to pay compensation.

12. In the case at hand, at the time of accident though claimant was driving the Rickshaw, he was driving it in the capacity of owner. No extra premium was paid by the claimant to Insurance Company to cover the risk of the owner under that policy. Therefore, obviously, the risk of the claimant was not covered under the policy of the insurance, which is third party policy. The insured cannot be treated as third party. The case of **United India Insurance Co. Ltd. Vs. Sunanda Dhumone** (supra) is distinguishable on facts that in that case the deceased had paid extra premium to cover the risk of the owner and driver.

13. In the circumstances, I have no hesitation to hold that the judgment and award passed by the Tribunal awarding compensation in favour of the claimant, is not correct and proper. The award passed by the Tribunal deserves to be set aside by allowing this appeal. Accordingly, First Appeal No.830 of 2007 is

allowed.

14. The judgment and award passed by the Motor Accident Claims Tribunal, Shrirampur, District : Ahmednagar in Motor Accident Claim Petition No. 25 of 2003 is set aside. The claim petition is dismissed.

15. The compensation amount if deposited by appellant-Insurance Company in this court, be refunded to it.

16. Parties to bear their respective costs of the appeal. Appeal is disposed of in above said terms.

[SUNIL K. KOTWAL, J.]

vsm/-