IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 686 OF 2005

The Divisional Manager,
United India Insurance Company
Limited, Behind Darling Hotel,
New Osmanpura, Aurangabad. … APPELLANT
(Ori. Respdt. No. 3)

V E R S U S

1. Madan S/o Rambhau Jadhav,
Age : 45 years Occu. Labour work,

2. Kamal Madan Jadhav,
Age: 40 years, Occu. Household,

Both residing at Rangar Hati,
Taluka Paithan, Dist. Aurangabad.

3. Umesh Ramesh Pardeshi,
Age: Adult, Occup. Owner
resident of Pardeshipura,
Paithan, District Aurangabad. ...RESPONDENTS
(Respdt. Nos. 1 & 2 are Ori. Claimants and Respdt. No. 3 - Ori. Respdt. No.2)

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Mr. D.V. Soman, Advocate for appellant.
Mr. B. A. Darak, Advocate for respondents No. 1 and 2(Absent)
Mr. Yuvraj V. Kakade, Advocate for respondent No. 3

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CORAM : A.M. DHAVALE, J.

DATED : 13th AUGUST, 2018.

ORAL JUDGMENT :-

1. The appellant - Insurance Company assails the Judgment and Award dated 12-02-2004 passed by the learned Member, Motor accident Claims Tribunal, Aurangabad (for short

"Tribunal"), in Motor Accident Claim Petition No. 589 of 1999 whereby the claimants were awarded compensation of Rs. 1,74,500/- inclusive of "*No fault Liability*" on account of death of their 13 year old son along with interest @ 9% p.a.

2. Mr. Soman, learned counsel for the appellant challenged the Judgment and Award to the extent of fastening liability to pay the compensation on the Insurance Company. According to him, there is clear breach of policy as offending vehicle was driven by a minor. The learned Tribunal has discussed about payment of the compensation to the claimants and recover the same from the owner of the vehicle in paragraph No. 17 of the judgment, but in the final order no such relief is granted to the Insurance Company.

3. Mr. Kakade, learned Advocate for respondent No. 2 owner supports the Judgment and Award. He argued that there is no proper pleading and no evidence to show that vehicle was driven by a minor and liability could be avoided on the ground of breach of policy. The Insurance Company has not examined anybody to that effect, therefore, the learned Tribunal has rightly fastened the liability on both the respondents.

4. Only point for my determination is, *whether the appellant – Insurance Company was liable to indemnify owner of the liability arising from accident?*

5. Mr. Soman, learned Advocate for the appellant has pointed out that the learned Tribunal has mentioned in paragraph No. 17 that respondent - driver was minor and he was not possessing valid driving licence at the time of accident. Thus, there was breach of Insurance Policy. He also pointed out that in the First Information Report (Exhibit-26) it has been stated that the accident was seen by the informant and driver of the taxi was "पोरगा". After giving dash the taxi driver had fled away.

6. The involvement of the taxi bearing registration No. MH-20-A-7904 in the accident has not been disputed. There is valid Insurance Policy covering risk, as on the date of accident on record (at Exhibit-29). The deceased was third party. In such circumstances, the burden was on the Insurance Company to prove that there was breach of policy. Mr. Kailash Fulchand Khune was shown as respondent No. 1 - driver of the offending vehicle. He was shown as major. By *pursis* Exhibit-20 it was stated that respondent No. 1 being formal party, his name may be deleted. Accordingly, his name was deleted from the array of respondents.

7. Mr. Soman, learned counsel for the appellant in support of his submission placed reliance on the judgment in the case of United ***India Insurance Company Ltd. Vs. Rakesh Kumar Arora and others reported in 2008 ACJ, 2855,*** in which it

was held that if minor was driving the vehicle, it is a breach of policy. In that case, considering the fact that the amount deposited by the Insurance Company, was received by the claimants, the Apex Court passed order of permitting Insurance Company to recover the amount from the owner. In the light of the fact discussed, such order can be passed in present matter also.

8. After going through the record, the learned Advocate Mr. Soman could not point out any material from the record to show that driver of the taxi was minor and was not holding valid driving licence. So far as written statement filed by Insurance Company is concerned, the Insurance Company has vaguely denied all the allegations. With regard to policy, the Insurance Company want to deny the existence of policy and even involvement of the vehicle. There is no specific defence of breach of policy to the effect that the driver of the vehicle was minor and not holding valid licence. There is no pleading nor evidence to show that the vehicle involved in the accident was driven by unauthorized person, in breach of term of Insurance Policy. The Insurance Company has not issued any notice to the driver and owner of the offending vehicle to produce driving licence issued in the name of Kailas Khune. The Insurance Company should have been at least produced the charge-sheet, which could have shown that the driver was driving the vehicle without valid

licence and was minor and would have been prosecuted for such offences under Motor Vehicles Act. The Officers of the Insurance Company did not take pains to lead any oral and documentary evidence, which could have easily proved this fact. In the circumstances, there is no material on record to show that there was breach of policy. The vague statement by the learned Tribunal that driver was minor cannot helpful for Insurance Company to avoid liability to pay compensation to third party, as per the terms of policy. In the light of afore said discussion, submission of Mr. Soman to pass an order as in *Rakesh Sharma* case (Supra), cannot be accepted. The appeal being devoid of substance deserves to be dismissed.

9. Accordingly, the appeal stands dismissed. Parties to bear their own costs.

[A.M. DHAVALE]
JUDGE

MTK.