IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1432 OF 2018

The National Insurance Company Ltd
a Subsidiary of the General Insurance
Corporation of India and a company
Incorporated under the Companies Act
having one of its Divisional Office at
Hazari Chambers, Station Road, Aurangabad
Through its Authorized signatory. ..Appellant

Versus

1. Anuradha Shivaji Chinte,
Age 25 yrs, Occu. Household,
r/o Dhaveli, Tq. Renapur,
Dist. Nanded.

2. Amoli Shivaji Chinte,
Age 3 yrs, U/g R.No.1,

3. Vaishnavi Shivaji Chinte,
Age 2 yrs, U/g R.No.1

4. Laxmibai Hanmant Chinte,
Age 56 yrs, Occ Household
r/o as above

5. Hanmant Irappa Chinte,
Age 62 yrs, Occ.nil,
r/o as above

6. Krishnai Tours and Travels
Through its proprietor
Vishal Marutirao Rautrao
Age Major, Occ. Business
r/o Kharola, Tk. Renapur,
Dist. Latur ..Respondents

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Mr. Ajit B. Kadethankar, Advocate for Appellant.
Mr. N.D. Kendre, for Respondent Nos. 1 to 5.

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CORAM : P.R. BORA, J.
DATE : 08th OCTOBER, 2018.

ORAL JUDGMENT:-

. The insurance company has preferred the present appeal challenging the judgment and award passed in Motor Accident Claim Petition No. 62 of 2013 by the Motor Accident Claims Tribunal at Latur on 08.12.2016.

2. The present respondent nos. 1 to 5 had preferred the aforesaid petition claiming the compensation on account of death of Shivaji Hanmant Chinte alleging the same to have been caused in a vehicular accident happened on 28.12.2012 having involvement of a jeep bearing Registration No. MH-24-F-3788 owned by present respondent no.6 and insured with the appellant-insurance company. Respondent nos. 1 to 5 are hereinafter referred to as 'the claimants'. It was the contention of the claimants that when deceased Shivaji was proceeding on his motorcycle bearing Registration No. MH-24-N-5029 along with his friend Navnath from Kharola to Dhaveli, the aforesaid jeep coming from the opposite direction gave dash to the motorcycle and in the accident so happened, Shivaji died on the spot. According to the claimants, the accident had occurred only because of the sole negligence of the

driver of the jeep. As stated in the petition, age of deceased Shivaji was 33 years and his income was stated to be Rs. 6000/- per month. The claimants had, therefore, claimed the total compensation of Rs. 5,00,000/-. The petition was resisted by the respondents on various grounds.

3. The owner though had in general terms denied the contentions raised in the petition, no specific defence was raised by him. The insurance company, however, has raised the defence as about the breach of policy condition by the insurer by allowing a person not holding a valid driving licence to drive the jeep at the relevant time. The objection was also raised for non-compliance of Section 134(c) of the Motor Vehicle Act. In order to substantiate the contentions raised in the petition, one of the petitioner namely Hanmant Irappa Chinte deposed before the Tribunal and the certified copy of the relevant police papers pertaining to the accident in question as well as about the income of deceased Shivaji were placed on record by the claimants. The claimants also examined One Mahadev Hanmant Chambhule to prove the income of deceased Shivaji. The respondent owner

did not enter into the witness box nor examined any witness on his behalf. The respondent-insurance company examined two witnesses. The first was Narayan Phophalkar, the Head Clerk in R.T.O. Office at Latur and another was Vijay Pastapure, the Branch Manager of the respondent-insurance company at Latur. Both these witnesses were examined on the issue of not holding a valid permit and fitness by the offending vehicle.

4. The learned Tribunal after having considered the oral as well as documentary evidence filed on record held the claimants entitled for the compensation of Rs. 8,89,000/- inclusive of NFL compensation jointly and severally from the owner and insurer of the offending jeep. Aggrieved by, the insurance company has preferred the present appeal.

5. Shri Kadethankar, the learned counsel appearing for the appellant-insurance company assailed the impugned judgment on various grounds. The learned counsel invited my attention to the observations made by the Tribunal in Para 16 of the impugned judgment to the effect that the offending

vehicle ceased to have fitness certificate as well as permit on the day of accident and submitted that in such circumstances, no liability could have been saddled upon the insurance company by the learned Tribunal. The learned counsel relied upon the judgment of this Court in the case of ***"Bajaj Allianz General Insurance Company Limited Versus Deoram S/o Shivram Jadhav, 2018 (2) Mh.L.J 101"***. The learned counsel submitted that in the similar set of facts, this Court has in the aforesaid matter passed an order directing the insurance company to first pay the amount of compensation and then to recover the same from the insured. The learned counsel submitted that the Tribunal in view of the observations made by it in Para 16 of the judgment, ought to have passed similar order permitting the insurance company to first pay and then to recover the amount of compensation from the insured. By not passing such order, according to the learned counsel, the Tribunal has committed a gross error. The learned counsel submitted that except the aforesaid objection though the other grounds are also raised in the memo of appeal are not pressed.

6. Shri Kendre, the learned counsel appearing for the original claimants resisted the contentions raised on behalf of the appellant-insurance company. The learned counsel submitted that infact, the insurance company had not raised any such defence of not having permit by the offending jeep in its written statement. In the circumstances, according to the learned counsel, now the insurance company cannot raise any objection in that regard, which was not raised at the earliest point of time it. The learned counsel submitted that the impugned judgment, therefore, does not require any interference.

7. I have given due consideration to the submissions made by the learned counsel appearing for the parties. I have perused the impugned judgment and the evidence on record. In view of the submission made by the learned counsel appearing for the claimants, when I perused the contents of the written statement filed by the appellant-insurance company before the Tribunal, it is revealed that though the insurance company had

raised the defence as about the driving licence, there is no whisper about the fitness of the offending jeep or about the violation of the permit etc. Though it was sought to be contended by the learned counsel appearing for the appellant-insurance company that the insurance company had in many words stated in its written statement that the things which are not specifically admitted shall not be taken to have admitted and has also given general denial of the facts contended, I am not convinced with the submission so made by the learned counsel. It has to be stated that when a defence is raised specifically and contains some specific ground, the same has to be specifically pleaded in the written statement and that too at the earliest point of time.

8. In the written statement filed by the insurance company admittedly, there is no even whisper about the defence which is being now raised by the appellant-insurance company. The learned counsel was persuasive in his submission that the insurance company was permitted to adduce the evidence by the Tribunal and that was not even objected by the claimants and when such evidence is

available on record, the same cannot be kept out of consideration, I am not convinced with the aforesaid submission also. It need not to be stated that the facts which are not pleaded by the plaintiff in his plaint, he cannot be permitted to adduce evidence pertaining to the facts which are not pleaded. The same principle applies to the pleadings in the written statement. If the party fails in raising any such defence and attempts to adduce evidence in that regard, the Court infact shall not allow such evidence to be brought on record.

9. It is not the case of the appellant-insurance company that even at any subsequent stage, the written statement was amended or modified. In the circumstances, it appears to me that the Tribunal has grossly erred in permitting the insurance company to adduce the evidence on the facts which were not pleaded by it in its written statement. In view of the facts as above, the evidence of two witnesses examined by the appellant-insurance company will have to be just ignored and cannot be taken into account.

10. It has to be further stated that in view of the specific defence raised by the appellant-insurance company as about breach of policy conditions by the insured, the Tribunal has recorded a negative finding. It is evident that in absence of any specific defence raised in the written statement, the evidence adduced in that regard was not liable to be considered by the Tribunal. In the appeal merely because such evidence exist on record and some stray observations are made by the Tribunal in that regard may not be sufficient for setting aside the impugned judgment or for its modification so as to make the owner of the vehicle liable to pay the said amount to the insurance company after it has been paid by it to the claimants.

11. As I noted herein-above, the aforesaid was only the issue raised and emphasized by the appellant-insurance company. Since, I do not find any merit in the aforesaid contention, the appeal fails and deserves to be dismissed and is accordingly dismissed, however without any order as to costs.

12. The amount deposited by the appellant-insurance company, which is still lying deposited in this Court shall be remitted with interest accrued thereon, in favour of the claimants in terms of the award passed by the Tribunal.

(P.R. BORA, J.)

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