IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 655 OF 2005

Sonba s/o Amrutrao Narvade
Age : 62 years, occu.: pensioner,
R/o Kaneri, Tal. Himayatnagar,
District Nanded. **Appellant**.
(original respondent No.1)

Versus

1. Ramrao Gyanoba Donge
Age : 47 years, occu.: agri.,
R/o Kopra, Tal. Hadgaon,
District Nanded.

2. United India Insurance Co.Ltd.
Through its Divisional Manager,
Traasing Market, Nanded.
District Jalna. **Respondents**.

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Mr. M.K. Deshpande, Advocate for the appellant.
Ms. Sonali Satpute, Advocate holding for
Mr. J.M. Murkute, Advocate for respondent No.1.
Mr. S.V. Kulkarni, Advocate for respondent No.2.

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CORAM : SUNIL K.KOTWAL, J.

DATED : 21st September 2018.

ORAL JUDGMENT.

1. This appeal is preferred by the original respondent No.1, who is owner of the offending vehicle i.e. jeep bearing

registration No. MH-26-C-389 which met with an accident on 19.01.1996, resulting into the injuries to the claimant.

2. Mr. Deshpande, learned Counsel for the appellant assailed the judgment and award passed by the learned Tribunal exonerating respondent No.2 (Insurance Company) of the offending vehicle on the ground of breach of condition of policy, after considering the admission of claimant Ramrao Donge (AW-1) that he paid fare of Rs. 5/- to the driver. Learned Counsel for the appellant further submits that in the written statement respondent No.2 – Insurance Company nowhere pleaded that owner or driver of the offending vehicle carried fare payee or gratuitous passenger by the offending vehicle. He submits that the plea taken by respondent No.2 – Insurance Company at the stage of cross-examination is not in consonance with the pleading of respondent No.2.

3. Mr. Kulkarni, learned Counsel for respondent No.2 – Insurance Company submits that in the written statement it is specifically pleaded that there is breach of condition of policy, and therefore, cross-examination of the claimant regarding payment of fare for travelling by offending jeep is in consonance with the

pleading.

4. No doubt, after going through the evidence placed on record, it becomes clear that the claimant Ramrao Donge (AW-1) has admitted in his cross-examination regarding payment of fare to the driver of offending vehicle. However, after going through written statement (Exh.19) filed by Insurance Company, it becomes clear that the plea of Insurance Company regarding breach of policy of insurance is on the ground that the driver of offending vehicle did not possess valid driving licence at the time of accident. In written statement, respondent No.2 – Insurance Company nowhere pleaded that by carrying fare payee or gratuitous passenger, owner of the vehicle committed breach of condition of policy.

5. No doubt, owner of the vehicle did not file written statement to contest the claim petition. However, it was the duty of Insurance Company to raise specific plea under Section 147 of the Motor Vehicles Act regarding breach of condition of policy by carrying fare payee passenger by the offending vehicle. In absence of such specific plea in the written statement, surprisingly at the stage of cross-examination Insurance

Company cannot take altogether different plea regarding payment of fare by claimant to the driver. Thus, the contention of learned Counsel for the appellant that the learned Tribunal accepted the plea taken by Insurance Company which is in variance with pleading of Insurance Company, is acceptable. Thus, the order passed by the Tribunal exonerating respondent No.2 – Insurance Company from any liability is obviously incorrect and deserves to be set aside.

6. It follows that this this appeal deserves to be allowed.

7. Accordingly, First Appeal No.655 of 2005 is allowed.

8. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs. 50,000/- (Rupees Fifty Thousand only) to the appellant / original claimant, inclusive of the amount of Rs.25,000/- under the head "No Fault Liability", with interest thereon at the rate of Rs. 9 % per annum from the date of filing of petition before the Tribunal till realization of the entire compensation amount.

9. The award passed by Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No. 780/2000 be modified accordingly.

10. The appeal is disposed of in above-said terms. Parties to bear their respective costs of the appeal.

11. Pending Civil Application is disposed of accordingly.

(SUNIL K. KOTWAL)
JUDGE

vdd/