IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1887 OF 2017
WITH
CA/5386/2015 IN FA/1887/2017

The Divisional Manager,
Oriental Insurance Company Ltd.
Aurangabad, Dist. Aurangabad.

... APPELLANT

VERSUS

1. Shri. Bhagwan Bhanudas Borude
Age: 33 years, Occu: Service
R/o. In front of Panjab Dhaba,
Yeola Road, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar

2. Shri. Machindranath Ratanrao Gayke
Age: Major, Occu: Tempo Owner,
R/o. Dhamori, Tq. Kopargaon
Dist. Ahmednagar

3. Shri. Rohidas Gangadhar Bhangare
Age: Major, Occu: Truck Owner,
R/o. Manoharpur, Tq. Akola.
Dist. Ahmednagar.

... RESPONDENTS

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Mr. M.K. Goyanka, Advocate for appellant.

Mr. A.T. Kanawade, Advocate for respondent No.1.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20th AUGUST, 2019

ORDER :

. Present appeal has been filed by original respondent No.2-Insurance Company challenging the judgment and award passed by learned Member Motor Accident Claims Tribunal, Kopargaon, District Ahmednagar in Motor Accident Claim Petition No.08 of 2004 dated 18.11.2013 whereby the appellant has been held liable to pay compensation along with respondent Nos.1 and 3, to the petitioners.

2. The application for getting compensation was filed by present respondent No.1 under Section 163-A of the Motor Vehicles Act. The claimant had received injuries in an accident which had taken place on 13.05.2003 at Akole Samsherpur road, near Shamsherpur village. The claimant was one of the occupants in tempo bearing registration No. MH-20-F-6011. There was a collusion between said tempo and truck bearing No. MH-17-A-6006. Opponent No.1 is the owner of the tempo. Opponent No.2 is the insurer with whom the tempo was insured and opponent No.3 is the owner of the truck. The claimant had sustained serious head injury and other injuries to the part of his body and it is stated that in spite of treatment he has suffered permanent disability.

3. Opponent No.1 by filing written statement contended that his friend Balasaheb Belekar was engaged in the services of tempo for

bringing the articles received in the marriage and about 8 to 10 people had travelled from the said tempo at the relevant time. It is stated that the said services were without any legal consideration and it was not for reward or hire. Only to help those people he had given his tempo. However, there was no negligence on the part of driver of the tempo.

4. Respondent No.2-Insurance Company filed written statement and raised the defence of breach of terms of policy by saying that it was a goods vehicle from which passengers were carried and the risk of the passengers was not covered in the said policy.

5. After the evidence was adduced, the learned tribunal has held that the accident had taken place due to the negligence on the part of driver of tempo as well as truck. The Insurance Company has failed to prove any breach of terms of policy and therefore amount of Rs.92,900/- has been awarded as compensation to the petitioner, to be paid by opponents, jointly and severally, together with interest at the rate of 7.5% per annum, from the date of the petition till actual realization of entire amount. The Insurance Company has challenged the finding by the tribunal that the Insurance Company is also liable to pay compensation to the petitioner.

6. Learned Advocate Mr. M.K. Goyanka appearing for

appellant submitted that the Insurance Company had taken a specific defence that there is breach of terms of policy. The entire recital in the petition would show that he was not travelling from the tempo in the capacity as labour. Admittedly, the tempo was a goods carrying vehicle and 8 to 10 persons had occupied the said tempo at the relevant time. The risk of the passengers was not at all covered under the policy and therefore, the learned Tribunal ought not to have saddled compensation amount on the shoulders of the insurance company. He has also relied on the decision of this Court in **The Divisional Manager Oriental Insurance Co. Ltd., Aurangabad Vs. Smt. Muktabai Mohan Raut and Ors. (First Appeal No.2667 of 2013)** decided by this Court on 17.02.2016, which was arising out of the same accident. In this case, the insurance company has been exonerated by holding, that there is breach of terms of policy by the owner of the tempo. Similar view deserves to be taken in this case.

7. Learned Advocate Mr. A.T. Kanawade appearing for respondent No.1 supported the reasons given by the tribunal.

8. The evidence of the petitioner does not say, that he was travelling as labour. Admittedly, the tempo, from which the claimant was travelling, belonging to original respondent No.1, was a goods

vehicle. Therefore, it can be said that the present petitioner was a passenger who was, in fact, not allowed to travel from the tempo. Another fact to be noted is, that in the sister matter decided by this Court on 17.02.2016, it had come on record, that respondent No.1 used to give his tempo to his friends and relatives for transporting the marriage party. The petitioner and others who were travelling from the tempo had taken the vehicle to attend the marriage ceremony of one Mr. Belekar. This can also be seen from the contents of the written statement filed by opponent No.1 himself. When it is not the specific case of the claimant, that he was travelling as labour for loading and unloading of the articles being carried from the tempo, his capacity has to be taken as passenger and therefore, when he was not allowed to travel from goods carrier and in order to prove that the vehicle was registered as goods carrier, the insurance company had examined the RTO Officer. It will have to be held, that there is breach of terms of policy as contemplated under Section 147 of the Motor Vehicles Act. Risk of such passenger was not covered under the policy separately, when in sister matter arising out of same accident the insurance company has been exonerated. The same view is required to be taken in this appeal also. Hence, following order is passed :

ORDER

1. Appeal is hereby allowed.

2. The Judgment and Award passed in M.A.C.P. No.8 of 2004 by Member, M.A.C.T., Kopargaon on 18.11.2013 is hereby set aside as against the insurance company i.e. original respondent No.2.

3. The claim filed against the insurance company stands dismissed.

4. It is clarified that there is no change in the Judgment and Award passed against the other respondents.

5. The Civil Application No.5386 of 2015 stands disposed of accordingly.

6. The amount deposited by insurance company be refunded to it.

(Smt. Vibha Kankanwadi, J.)

Shubham/