IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 874 OF 2015

Reliance General Insurance
Company Limited, through its
Manager, C-9-10, 2nd Floor,
Aurangabad Business Centre,
Adalat road, Aurangabad. **Appellant.**

Versus

1. Pralhad Shamrao Murkute
Age : 42 years, occu.: labourer
R/o Vasa, Taluka Jintur,
District Parbnahi.

2. Khan Mohd. Haji Rehman Sama
Age : major, occu.: business
R/o Nani Chitrai, Tal.Bhachau,
District Kachchh (Gujrat). **Respondents**.

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Mr. S.G. Chapalgaonkar, Advocate for the Appellant.
Mr. S.S. Deshmukh, Advocate for respondent No.1.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 18 February 2019.

Judgment pronounced on : 22 February 2019.

JUDGMENT.

1. Reliance General Insurance Company Limited has preferred this appeal against the judgment and award passed by Motor Accident Claim Tribunal (hereinafter referred to as the

"Tribunal"), Parbhani in Motor Accident Claim Petition No. 283/2010, directing the Insurance Company of the offending truck to pay the compensation of Rs. 5,35,000/- to the claimant and later on recover it from the respondent No.1 – owner of the offending truck. In this appeal respondent No.1 is the original claimant and respondent No.2 is the owner of offending truck and the appellant is Insurer of the offending truck. For the sake of clarity, hereinafter the parties are referred to in accordance with their status in the original proceeding before the Tribunal.

2. Heard Mr. S.G. Chapalgaonkar, learned Counsel for the appellant and Mr. S.S. Deshmukh, learned Counsel for the claimant.

3. Learned Counsel for the appellant / Insurance Company does not dispute the quantum of compensation as well as occurrence of accident due to rash and negligent driving by driver of offending truck. He has pointed out that even owner of the offending truck has not filed counter appeal to deny his liability to pay compensation to the claimant.

4. Contention of learned Counsel for the appellant / Insurance Company is that, as the claimant was travelling by

offending goods truck as an unauthorised passenger, there was breach of conditions of policy of insurance, and therefore, the Insurance Company of the truck is not liable to indemnify owner of the truck or to pay compensation and later on recover it from owner of the truck. He has drawn my attention to the finding of Tribunal that due to breach of condition of policy of insurance, the Insurance Company is liable to be exonerated from its liability to pay the compensation. However, the Tribunal, relying on judgment of Supreme Court in the case of **"United India Insurance Company Ltd. Vs. K.M. Poonam and others" [(2015) 15 SCC 297]**, directed the Insurance Company to first pay compensation to the claimant and then recover that amount from the owner of offending truck.

5. Learned Counsel for the appellant assailed only this direction given by the Tribunal. Learned Counsel for the appellant / Insurance Company placed reliance on the judgment in the case of **"United India Insurance Co. Ltd. Vs. Raghunath Domaji Sahare and others"** delivered by learned Single Judge of this Court at Nagpur Bench in First Appeal No.518 of 2005, dated 15 June 2017, wherein it is held that where

a gratuitous passenger was travelling by goods truck, due to breach of condition of policy of insurance, the Tribunal cannot exercise its extraordinary discretion in issuing direction to the Insurance Company to pay compensation to the claimant and recover it from the owner of offending truck.

6. In reply, learned Counsel for the claimant submits that though the injured was travelling by the offending truck as a gratuitous passenger, being third party to the contract of insurance in between Insurance Company and owner of the offending truck, the Insurance Company is liable to pay compensation to the claimant and can later on recover the same from the owner of offending vehicle. He placed reliance on the case of **"S. Iyyapan Vs. M/s United India Insurance Company Ltd. And another" (AIR 2013 SC 2262)**.

7. In the case at hand, the claimant has not filed cross objection or cross appeal to challenge the correctness of the finding of Tribunal that the injured was travelling by offending goods truck as unauthorised / gratuitous passenger, and therefore, the Insurance Company has proved the breach of condition of policy of insurance. The finding of Tribunal that the

Insurance Company is liable to exonerate is not disputed by the claimant. Therefore, only the point for consideration is, whether despite breach of condition of policy of insurance, can the Tribunal direct the insurer to pay compensation to the claimant and recover the same from the insured?

8. In the cases of **"United India Insurance Co.Ltd. Vs. Anubai Gopichand Thakare and others" [2007 (5) Bom.C.R. 520]** and **"New India Assurance Co.Ltd. Vs. Abhiman Kadhare [2016 DGLS (Bom.) 876]**, the learned Single Judge of this Court held that in the case of death of gratuitous passenger travelling by goods truck, once the Insurance Company is exonerated, direction cannot be issued against the Insurance Company to first pay the amount of compensation and then recover it from the owner and driver of insured vehicle. However, at the same time in the cases of **"United India Insurance Co. Ltd. Vs. Godabai [2018 ACJ 953 (Bombay HC)]** and **"New India Assurance Co. Ltd. Vs. Paikaji Asuji Lambade and others" [2018 (5) ALL MR 571]**, the learned Single Judge of this Court has taken contrary view. Therefore, I am bound to consider what is the exact position of

law regarding issuance of direction of 'pay and recover' against the Insurance Company.

9. In the cases of **“United India Insurance Co. Ltd. Vs. Suresh K.K. [2008 ACJ 1741 (SC)], “National Insurance Co. Ltd. Vs. Saju P. Paul (2013 ACJ 554), “Manuara Khatun Vs. Rajesh Kumar Singh [2017 (5) Mh.L.J. 522]** and **“S. Iyyapan Vs. M/s United India Insurance Co. Ltd.” (AIR 2013 SC 2262)**, the Supreme Court consistently held that despite exoneration of the Insurance Company from the liability to pay compensation to the claimants, directions can be issued to the Insurance Company to first pay compensation to the original claimants and subsequently recover it from the owner of offending vehicle, by simply initiating proceeding before the Executing Court without filing any suit. In view of this consistent view taken by the Supreme Court, the directions issued by the Tribunal against the Insurance Company to pay compensation to the claimant and later on recover it from the owner of offending truck, cannot be faulted.

10. I hold that this appeal being devoid of merits, deserves to be dismissed.

11. Accordingly First Appeal No.874 of 2015 is dismissed.

Parties to bear their respective costs of the appeal.

(SUNIL K. KOTWAL)
JUDGE

vdd/