IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1283 OF 2011
WITH
CIVIL APPLICATION NO.356 OF 2019

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad ..Appellants

Vs.

1. Bhagyashri w/o. Dhanraj Soudane,
Age:27 years, Occ. Household,
r/o. Yusuf Wadgaon, Tq. Kaij,
Dis. Beed

2. Tushar s/o. Dhanraj Soudane,
Age:5 years, Minor,

3. Rani @ Bai d/o. Dhanraj Soudane,
Age:3 years, Minor

4. Kanhopatra w/o. Raosaheb Soudane,
Age:56 years, Occ. Nil,
r/o. As above

5. Raosaheb s/o. Bapurao Soudane,
Age : 61 years, Occ. Nil,
r/o. As above

6. Ramesh s/o. Jagannath Patil,
Age : Major, Occ. Jeep owner,
r/o. Yusuf-Wadgaon, Tq. Kaij,
Dist. Beed ..Respondents

Mr.S.G.Chapalgaonkar, Advocate for appellant
Mr.S.G.Kawade, Advocate for respondent nos.1 to 5
Mr.H.P.Jadhav, Advocate for respondent no.6

AND
CIVIL APPLICATION NO.356 OF 2019
IN
FIRST APPEAL NO.1283 OF 2011

Bhagyashri w/o. Dhanraj Soudane,
Age:27 years, Occ. Household,
r/o. Yusuf Wadgaon, Tq. Kaij,
Dis. Beed ..Applicants

Vs.

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad
and anr. ..Respondents

Mr.S.G.Kawade, Advocate for applicants
Mr.S.G.Chapalgaonkar, Advocate for respondent no.1
Mr.H.P.Jadhav, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.
DATE : AUGUST 26, 2021

JUDGMENT :-

This is an insurance company's appeal challenging the judgment and award dated 24.09.2010 passed by Motor Accident Claims Tribunal (M.A.C.T.), Ambajogai, in Motor Accident Claim Petition (M.A.C.P.) No.127 OF 2008.

2. By the impugned judgment and award, the appellant - insurance company and owner of the vehicle (Jeep bearing registration No.MH-23-E-1151) have been directed to pay jointly and severally a sum of Rs.4,04,000/- together with interest at the rate of 7.5% p.a. to the claimants, from 25.08.2008 till its realisation.

FACTS:-

3. On 16.08.2008, deceased – Dhanraj was proceeding in ill-fated vehicle (Jeep). While passing from village Sukali on Yusuf-Wadgaon to Kalamb road, the driver lost control over the vehicle, as a result of which, it turned turtle. The inmates of the vehicle including Dhanraj succumbed. The claimants, therefore, filed M.A.C.P. for compensation. The M.A.C.T., on appreciation of evidence in the matter, passed the impugned award.

4. Mr.S.G.Chapalgaonkar, learned counsel for the appellant – insurance company, would submit that the policy of insurance purchased by the owner of the ill-fated vehicle, was

act-only policy. The deceased was traveling as a gratuitous passenger. The risk of the passenger traveling in the vehicle was not covered under the policy of insurance. The deceased could not be termed to be a third-party. According to learned counsel, the M.A.C.T., therefore, erred in directing the appellant - insurance company to pay the amount of compensation under the impugned award.

5. Mr.S.G.Kawde, learned counsel for respondent nos.1 to 5 – claimants and Mr.H.P.Jadhav, learned counsel for respondent no.6 – owner of vehicle, would submit that the M.A.C.T., on appreciating the evidence in the case, has rightly passed the award. Learned counsel took me through paragraph 19 of the judgment to ultimately submit that no interference with the impugned award is called for. Mr.Jadhav, learned counsel for respondent no.6, submitted that the owner of the vehicle had transferred the vehicle long before the accident.

6. The accident took place on 16.08.2008. The policy of insurance was valid from 31.07.2008 to 30.07.2009.

Admittedly, it was a `Private Car Liability Only Policy' (act-only policy). As such, the insurance company was liable to indemnify the owner of the vehicle for compensation, which he would have been directed to pay to a third party. The deceased was one of the passengers traveling in the jeep. By no stretch of imagination, he could be termed to be a third party victim of the accident. Admittedly, the risk of the passenger traveling in the vehicle has not been covered under the policy of insurance. Still, the M.A.C.T. has observed in paragraph 19 of the judgment as under :-

> "19. Certified copy of insurance policy of offending jeep is at Exh.43. This shows that sitting capacity of the said jeep is eight persons. It is admitted by respondent no.2 that at the relevant time, Dhanraj was traveling in the said jeep. So, taking into consideration that sitting capacity of offending jeep was eight persons and Dhanraj was traveling in the said jeep at the relevant time, I am of the opinion that there is no substance in the contention of the insurance company that it is not liable to pay compensation to applicants for death of Dhanraj."

7. The aforesaid observations of the M.A.C.T. run counter to the terms of the insurance contract and the settled proposition of law. The issue is no longer *res-integra*. In the case of **General Manager, United Insurance Company Limited Vs. M. Laxmi and ors., (2009)17 SCC 301**, Hon'ble Supreme Court observed thus:-

> "Motor Vehicles Act, 1988- Ss.147 and 166- Third-party risk-Death of pillion rider-Liability of insurer to pay compensation-Deceased being a pillion rider and also gratuitous passenger hence, not a third party, reiterated, cannot claim compensation from Insurance Company."

In the case of **United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and ors., (2006)4 SCC 404**, Hon'ble Supreme Court observed thus:-

> "Motor Vehicles Act, 1988-S.147- Third party risk-Liability of insurer to pay compensation under S.147-Extent of-Risk of death or injury to gratuitous passenger carried in a private vehicle, if covered-Held, an insurance policy under S.147 does not cover such a risk."

8. In view of the above, the award passed against the appellant – insurance company is required to be set aside. Needless to mention that this Court, in such a case, has no jurisdiction to pass order directing the appellant – insurance company first to pay the amount of compensation and then recover it from the owner of the vehicle. Respondent no.6 is registered owner of ill-fated vehicle on the day of the accident. He, therefore, cannot escape liability on the ground of having transferred the vehicle before the accident.

9. In the result, the appeal succeeds. Hence, the following order:-

(i) The First Appeal is allowed. The impugned order dated 24.09.2010 passed by Motor Accident Claims Tribunal, Ambajogai, in Motor Accident Claim Petition No.127 OF 2008 is set aside. M.A.C.P. No.127 of 2008 stands dismissed against the appellant-insurance company.

(ii) The amount of compensation, if any, deposited by the insurance company in this appeal, be paid back to it along with interest accrued thereon.

(iii) Civil Application also stands disposed of.

[**R.G. AVACHAT, J.**]

KBP