IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2530 OF 2019

The New India Assurance Company
Ltd., D.O. No.1, Adalat Road,
Aurangabad, through its
authorised signatory
Avinash s/o. Achyut Bugdani,
Age:56 years, Occ. Service,
r/o. Aurangabad ..Appellant

Vs.

1. Sangita w/o. Ashrappa Shinde,
Age : 44 years, Occ. Household,
r/o. Karkatta, Tq. and Dist. Latur

2. Akash s/o. Ashrappa Shinde,
Age : 21 years, Occ. Education,
r/o. Karkatta, Tq. and Dist. Latur

3. Chintamani s/o. Vithal Shinde,
Age:80 years, Occ. Nil,
r/o. Karkatta, Tq. and Dist. Latur

(Resp.no.3, died, through L.Rs.
i.e. resp.nos.1 and 2 as per
Court's order dated 09.12.2019)

4. Irfan s/o. Abas Kazi,
Age : 37 years, Occ. Driver,
r/o. Kazi Galli, Dhoki,
Tq. and Dist. Osmanabad

5. Irfan s/o. Salim Pathan,
Age : 45 year, Occ. Owner,
r/o. Mahatma Gandhi Nagar,
Osmanabad ..Respondents

Mr.M.M.Ambhore, Advocate for appellant
Mr.S.S.Panale, Advocate for respondent nos.1 and 2
Mr.A.S.Bayas, Advocate for respondent nos.4 and 5

AND
CIVIL APPLICATION NO.13862 OF 2019
IN
FIRST APPEAL NO.2530 OF 2019

Sangita w/o. Ashrappa Shinde,
Age : 44 years, Occ. Household,
r/o. Karkatta, Tq. and Dist. Latur
and anr. ..Applicants

Vs.

Irfan s/o. Abas Kazi,
Age : 37 years, Occ. Driver,
r/o. Kazi Galli, Dhoki,
Tq. and Dist. Osmanabad
and ors. ..Respondents

Mr.S.S.Panale, Advocate for applicants
Mr.A.S.Bayas, Advocate for respondent nos.1 and 2
Mr.M.M.Ambhore, Advocate for respondent no.3

CORAM : R.G. AVACHAT, J.
RESERVED ON : SEPTEMBER 30, 2021
PRONOUNCED ON : OCTOBER 21, 2021

JUDGMENT :-

This appeal is filed by the insurance company taking exception to the judgment and award dated 04.05.2019 passed by the Motor Accident Claims Tribunal, Latur (“the Tribunal”, for short) in Motor Accident Claim Petition No.270 of 2015. The challenge is mainly on the ground of there having been no insurance cover to the offending car bearing registration no.MH-01-AC-9984 involved in the accident at the relevant time.

2. The facts, giving rise to the present appeal, are as follows:-

The deceased - Ashrappa was 45 years old ex-serviceman. He would draw pension of Rs.15,000/- per month. He would do agriculture post retirement. He was on his way to the agricultural field on his motorbike bearing registration no.MH-25-D-7881. It was little past 12 noon on 28.08.2015. The car (MH-01-AC-9984) knocked him down from behind. As a result of the injuries suffered in the accident, Ashrappa passed away. His widow, minor son and father filed the petition for compensation. The Tribunal allowed the same granting compensation of Rs.4,15,000/- with interest at the rate of 9% per annum from the date of claim petition till realisation thereof.

3. Heard learned counsel appearing for the parties.

4. Mr.M.M.Ambhore, learned counsel for the appellant-insurance company, would submit that the accident took place on

28.08.2015 by 12.20 p.m. The insurance policy of the car was obtained two hours thereafter. As such, the car did not have insurance cover when it met with the accident. The appellant-insurance company has, therefore, no liability to pay compensation. He, therefore, urged for allowing appeal.

5. Mr.S.S.Panale, learned counsel for respondent nos.1 and 2 - claimants and Mr.A.S.Bayas, learned counsel for respondent no.5 - owner of the car, would, on the other hand, submit that the car owner had been to the office of the insurance company on 27.08.2015 itself. He submitted insurance proposal. Paid premium as well. The Officer of the appellant-insurance company, however, informed him that he would require sometime for paper work and the policy would be issued to him the following day. The xerox copy of the proposal of insurance, allegedly submitted to the appellant-insurance company, was placed before the Tribunal. According to learned counsel, the Tribunal, therefore, rightly believed the testimony of the owner of the car (respondent no.5 herein). Learned counsel for the claimants would, in the alternative, submit that if this Court comes to the conclusion that the offending car did not have insurance at the relevant time, this being a third party

claim, the appellant-insurance company may be directed to pay the amount of compensation and recover the same from the car owner (respondent no.5).

6. In view of the above, the following points arise for my determination:-

> (a) Whether the car (registration no.MH-01-AC-9984) did have insurance cover granted by the appellant-insurance company when it met with accident ?
>
> (b) What order ?

R E A S O N S

7. Admittedly, the accident involving the motorbike (MH-25-D-7881) and the car (MH-01-AC-9984) took place by 12.20 p.m. on 28.08.2015. As a result of the injuries suffered in the accident, Ashrappa (motorbike rider) passed away. On due investigation, the driver of the car (respondent no.4 herein) was proceeded against.

8. The appellant-insurance company came with a specific case of having granted insurance cover to the car with effect from 02.38 p.m. on 28.08.2015. Exhibit-41 is the policy of insurance.

The period of insurance cover commenced on 28.08.2015 at 02:38:07 sec. (p.m.) to 27.08.2016 11:59:59. The Officer examined on behalf of the appellant-insurance company testified that the nature of insurance cover granted to the offending car was, liability only (Act only policy). If a consumer wants to purchase such kind of policy of insurance, a printed proposal form duly filled in, is required to be submitted along with Registration Certificate of the vehicle concerned. The vehicle sought to be insured was not examined/inspected since the proposal is for Act-only policy. No sooner the amount is received towards premium along with the insurance proposal, a computerised insurance policy is issued forthwith. Unless and until premium is paid, no policy of insurance is issued. No work is manually done. Everything is computerised. The witness further testified that the owner of the car deposited the amount of premium along with the insurance proposal on 28.08.2015 by 2:38 p.m. The insurance company, therefore, immediately issued him the policy of insurance commencing by that time only. This witness did not give in to any of the questions put to him during cross-examination. He stood the ground. As against his evidence, there is evidence of respondent no.5 (car owner). It is in his evidence that on 27.08.2015 itself, he had been to the office of the appellant-insurance company. He paid the amount of premium in cash and submitted a duly filled in proposal of insurance. The Officer of insurance company, however, informed him that the policy of insurance would be issued in his favour the following day. He placed on record a xerox copy of insurance proposal (Exh.56) said to have been submitted by him on 27.08.2015.

9. It has to be noted that the proposal form is printed one. The same is available with any of the offices of insurance company. It may also be available with the insurance agents. The proposal is required to be filled in by owner of the vehicle. Respondents no.5 (car owner) did not place on record any evidence to show the appellant-insurance company to have had acknowledged the receipt of the duly filled in proposal form along with the amount of premium on 27.08.2015 itself. It was not a case of renewal of policy of insurance. Learned counsel for the appellant-insurance company has rightly submitted that respondent no.5 just placed on record the proposal form filled in by him, only with a view to create evidence. Respondents no.5 is a person interested to see that the offending vehicle had insurance cover when it met with the accident. The evidence of the witness examined on behalf the appellant-insurance

company could not be doubted. He gave in his evidence the procedure of obtaining the policy of insurance. The appellant is not an individual entity. All its affairs are performed by its officials. A computerised system was in vogue with its office. It was not in the known that the vehicle had met with an accident on 27.08.2015 itself. The appellant-insurance company had, therefore, no reason to issue post dated policy of insurance. The policy of insurance (Exh.41) has been issued in the official course of business and it carries presumptive value.

10. The Tribunal simply relied on the testimony of the car owner and xerox copy of the insurance proposal (Exh.56) tendered in evidence. A duly filled in insurance proposal said to have been under the signature of the car owner, was placed on record on behalf of the appellant-insurance company. Respondent no.5 – car owner did not submit the duly filled in insurance policy form on 27.08.2015. Only after the car met with the accident, he rushed to the office of the appellant-insurance company to purchase the policy of insurance. It is only on his submitting the proposal form on 28.08.2015 by 2:38 p.m., a computer generated policy of insurance came to be issued in his favour. The accident had already taken

place two hours before the policy of insurance was purchased. As such, the offending car did not have insurance cover when it met with accident.

11. In the case of **New India Insurance Co. Vs. Bhagwati Devi and ors., (1998)6 SCC 534,** the Apex Court held thus:-

> " Insurance-policy when became operative-policy obtained on the date of accident at about 4 p.m.-Accident having occurred around 11 a.m. on that very date-The principle that if there should be no contract to the contrary, an insurance policy becomes operative from the previous midnight when bought during the day following, held, inapplicable since a specific time for its purchase was mentioned in the policy-Hence though claim rejected against insurance company it would be allowable against the driver and the owner of the offending vehicle".

In the case of **National Insurance Co. Ltd. Vs. Jikubhai Nathuji Dabhi (Smt) and ors., (1997)1 SCC 66**, the Apex Court held thus:-

> " Insurance-Policy when became operative-In view of special contract mentioned in the policy viz. It would be operative from 4.00 p.m. on the date of payment of premium, general provision under General Clauses Act that contract would be operative from midnight would not be applicable-Accident in this case having occurred around 11 a.m. on the date of payment of premium, held, insurance coverage would not enable the claimant to seek recovery of the amount from the appellant-Company."

12. Learned counsel for the claimants relied on the Apex Court judgments in the cases of (i) Shamanna and anr. Vs. Divisional Manager, Oriental Insurance Company Limited and ors., (2018)9 SCC 650; (ii) S. Iyyapan Vs. United India Insurance Company Limited anr., (2013)7 SCC 62; and (iii) a decision of the Madras High Court in the case of Oriental Insurance Co. Ltd., Vs. Cudalore Vs. M.Pushpan and ors., in CMA No.3254 of 2006 dated 24.04.2009, to submit that the Court can direct the appellant-insurance company to pay the amount of compensation and recover the same from the owner of the vehicle.

13. I have carefully perused the authorities relied on, to find that in all these cases, the policy of insurance had already been issued before the accidents in question took place. These were the cases, wherein breach of conditions of policy of insurance were held to be proved. In one case, it was repudiation of contract of insurance on account of dishonour of cheque issued towards premium amount. The policy was cancelled post accident. In short, the authorities relied on by learned counsel for the claimants are of no assistance to him.

14. In view of the above, the appeal succeeds. Hence, the following order:-

(i) The appeal is allowed.

(ii) The award dated 04.05.2019 passed by the Motor Accident Claims Tribunal, Latur, in Motor Accident Claim Petition No.270 of 2015, against the appellant-insurance company is hereby set aside.

(iii) M.A.C.P. No.270 of 2015 stands dismissed against the appellant - insurance company.

(iv) Civil Application No.13862 of 2019 stands disposed of.

(v) Amount in deposit be paid back to the insurance company with interest accrued thereon.

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

KBP