IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2820 OF 2017 WITH
CIVIL APPLICATION NO.13750 OF 2016

United India Insurance Company Ltd.
through its Administrative Officer (T.P. Hub)
Shri Mahendra Pratapsinh Virat
Age 49 years, occu. Service,
R/o Divisional Office – I,
Osmanpura, Aurangabad ... APPELLANT

<u>VERSUS</u>

1. Siminta w/o Sandipan Tidke,
Age 32 years, Occu. Household,
R/o Bhogalwadi, Taluka Dharur,
District Beed.

2. Shivam s/o Sandipan Tidke,
Age 8 years, Occu. Education,
R/o as above.

3. Siddharth s/o Sandipan Tidke,
Age 6 years, Occu. Education,
R/o as above.

(Respondent Nos.2 and 3 being minor,
under guardianship of their natural mother
i.e. respondent No.1.)

4. Uttam Raosaheb Tidke,
Age major, Occu. Agriculture, &
Business, R/o Bhogalwadi,
Taluka Dharur, District Beed.

5. Bhausaheb Manohar Munde,
Age 30 years, Occu. Driver,
R/o as above. ... RESPONDENTS

....

Shri S.S. Rathi, Advocate for appellant
Shri M.P. Kale, Advocate holding for
Shri P.N. Mule, Advocate for respondents No.1 to 3
Shri R.G. Shirsath, Advocate for respondent No.5.

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WITH

CIVIL APPLICATION NO.6719 OF 2021 IN
FIRST APPEAL NO.2820 OF 2017

1. Siminta w/o Sandipan Tidke,
   Age 36 years, Occu. Household,
   R/o Bhogalwadi, Taluka Dharur,
   District Beed.

2. Shivam s/o Sandipan Tidke,
   Age 12 years, Occu. Education,
   R/o as above.

3. Siddharth s/o Sandipan Tidke,
   Age 10 years, Occu. Education,
   R/o as above.

(Respondent Nos.2 and 3 being minor,
under guardianship of real mother
i.e. respondent No.1.) … **APPLICANTS**

VERSUS

1. United India Insurance Company Ltd.
   through its Administrative Officer (T.P. Hub)
   Shri Mahendra Pratapsingh Virat
   Age 49 years, Occu. Service,
   R/o Divisional Office – I,
   Osmanpura, Aurangabad

2. Uttam Raosaheb Tidke,
   Age major, Occu. Agriculture &
   Business, R/o Bhogalwadi,
   Taluka Dharur, District Beed.

3. Bhausaheb Manohar Munde,
   Age 34 years, Occu. Driver,
   R/o as above. … **RESPONDENTS**

....
Shri M.P. Kale, Advocate holding for
Shri P.N. Mule, Advocate for applicants
Shri S.S. Rathi, Advocate for respondent No.1.
Shri A.R. Thipase, Advocate for respondent No.2.
Shri R.G. Shirsath, Advocate for respondent No.3.
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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 4th August, 2021

Date of pronouncing judgment : 28th October, 2021

JUDGMENT :

The challenge in this appeal is to the judgment and award dated 15/4/2016, passed by learned Member, Motor Accident Claims Tribunal (MACT), Beed in Motor Accident Claim Petition (MACP) No.29/2012, awarding a sum of Rs.12,47,000/- (Rupees Twelve Lakhs Forty Seven Thousand) together with interest thereon @ 7% p.a. from the date of filing of the MACP till the date of realisation of the amount. The appellant Insurance Company (original respondent No.3) was directed to pay the entire amount of compensation and recover a sum of Rs.7,50,000/- from the original respondents No.1 and 2 owner and driver respectively of the vehicle involved in the accident. The Insurance Company has, therefore, preferred this appeal.

<u>FACTS</u> :-

2. Deceased Sandipan Tidke had been to village Telgaon on 10/11/2011. On completion of his work there, he boarded Commander Jeep No.MH-11-H-7204 for returning to his village Bhogalwadi. The respondent No.5 was at the wheel of the jeep. He was driving the jeep in rash and negligent manner. When the vehicle was passing by village Kari at about 5.30 Hrs., the deceased fell down from running jeep and died on the spot. His legal representatives, respondents No.1 to 3 herein preferred MACP for compensation. The Insurance Company and respondents No.4 and 5 appeared in the proceedings. It is the case of the Insurance Company that the vehicle involved in the accident had insurance cover to unknown passengers, 9 in number, amounting to Rs.1,00,000/- per person, the deceased was not a third party. The insurance policy was of the nature of 'liability only policy'. The Insurance Company has, therefore, no liability to pay the claimants compensation more than a sum of Rs.1,00,000/-. Even the forum to claim compensation in pursuance of the insurance policy is different than MACT.

3. The MACT, vide its impugned judgment and award, held that, as per the terms of the insurance policy, the liability of insurance company was limited to Rs.7,50,000/-.

It, however, directed the insurance company to pay the entire amount under the award and then recover the excess amount of Rs.4,97,000/- from respondent No.4 – owner of the vehicle.

4. Shri Swapnil S. Rathi, learned counsel for the appellant insurance company would submit that, the Member, MACT misread the insurance policy. It was 'act only policy'. The deceased was not a third party. He was traveling as paid passenger in the vehicle involved in the accident. As per the terms of the contract of insurance, the insurance company has liability to the extent of Rs.1,00,000/- per person traveling in the vehicle. The liability for Rs.7,50,000/- was limited in respect of loss or damage of goods/ property. According to learned counsel, since the deceased was not a third party, the insurance company has no liability to pay amount of compensation more than Rs.1,00,000/-. The insurance company cannot be saddled with the liability to pay first and then recover the amount from the owner of the vehicle. The learned counsel has relied on following authorities :-

(1) Oriental insurance Co. ltd. Vs. Sudhakaran K.V. & ors. [2008 AIR SCW 4549]

(2) New India Assurance company Ltd. Vs. Babasaheb Anna Mali & ors. [AIR 2002 BOMBAY 27]

(3) New India Assurance Company Ltd. Vs. Lilabai Shrimant Misal & ors. [2015 91) Bom.C.R. 620]

Learned counsel, therefore, urged for setting aside the impugned award passed against the Insurance Company.

5. Shri M.P. Kale, learned counsel for respondents No.1 to 3 would, on the other hand, submit that, the insurance policy covers the risk of passengers traveling in the jeep. In view of the same, the MACT was justified in directing the insurance company to pay the amount. The learned counsel relied on a Full Bench Judgment of Karnataka High Court in case of **New India Assurance Co. Ltd., Bijapur by its Divisional Manager Vs. Yallavva & anr. [ILR 2020 KAR 2239]**. According to him, after having considered some of the judgments of the Apex Court on the point involved, the Full Bench of the Karnataka High Court has observed that, the insurer is liable to pay the third party and recover from the insured, even if there is breach of any condition recognized under Section 149(2) of the Motor Vehicles Act, and even if it is a fundamental breach and the insurer proves the same. The learned counsel, therefore, urged for dismissal of the appeal.

6. The insurance policy was titled 'private car, liability only policy'. It was valid for the period from 25/12/2010 to 24/12/2011. The insurance policy was in force while the accident took place. The relevant clauses in the insurance policy are as follows :-

> **LIABILITIES TO THIRD PARTIES :**
>
> 1. Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's cost and expenses which the insured shall become legally liable to pay in respect of :-
>
> (i) death or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.
>
> (ii) Damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured up to the limit specified in the schedule.

7. In case of Oriental Insurance Co. Ltd. (supra), the Apex Court has observed :-

> "8. In terms of Section 147 of the Act only in regard to reimbursement of the claim to a third party, a contract of insurance must be taken by the owners of the vehicle. It is imperative in nature. When, however, an owner of a vehicle intends to cover himself from other risks; it is

> permissible to enter into a contract of insurance in which event the insurer would be bound to reimburse the owner of the vehicle strictly in terms thereof.
>
> 9. The liability of the insurer to reimburse the owner in respect of a claim made by the third party, thus, is statutory whereas other claims are not.
>
> 10. The only question which, therefore, arises for our consideration is as to whether the pillion rider on a scooter would be a third party within the meaning of Section147 of the Act.
>
> Indisputedly, a distinction has to be made between a contract of insurance in regard to a third party and the owner or the driver of the vehicle.
>
> . . . .
>
> 14. The provisions of the Act and, in particular, Section 147 of the Act were enacted for the purpose of enforcing the principles of social justice. It, however, must be kept confined to a third party risk. A contract of insurance which is not statutory in nature should be construed like any other contract."

8. The Apex Court has further held that, in case of a contract of an insurance covering risk of third party, but not that of owner or pillion rider of two wheeler, death of pillion rider not on the part of rash and negligent driving on the part of another vehicle, liability of insurance is not extended to death of pillion rider. In short, the Supreme Court has held

that, a pillion rider is not a third party.

9. In case of New India Assurance Company Ltd. (supra), the Division Bench of this Court has held :-

> "Liability of Insurance Company - Third party policy – Expression, "third party" - would not cover passenger or pillion rider of motor vehicle except it is a motor vehicle for carrying passenger."

10. The vehicle involved in the accident was a private vehicle. The deceased was traveling therein as a gratuitous passenger. The very vehicle met with accident without there being intervention of any other vehicle, the deceased was not a third party within the meaning of Section 147 of Motor Vehicles Act. As per the terms of the contract of insurance, the respondent No.4 – owner has paid a sum of Rs.450/- towards premium for covering a risk of personal accident to unnamed passenger (9 in number), to the extent of sum of Rs.1,00,000/- per person. The liability of the Insurance Company would, therefore, be for not more than Rs.1,00,000/- to be paid to legal representatives of the deceased Sandipan.

11. I have carefully perused the judgment of the Full Bench of Karnataka High Court. The said judgment is

persuasive so far as regards this Court is concerned. In view of there being the Apex Court judgment in case of Oriental Insurance Company Ltd. (supra), I do not propose to rely on the judgment of the Karnataka High Court.

12. In my view, therefore, the MACT has clearly erred in holding the Insurance Company to be liable to pay entire amount under the award first and then recover sum of Rs.4,97,000/- from the owner of the vehicle. Admittedly, the MACT misread the clause of limits of liability appearing in the insurance policy since the said clause pertains to Insurance Company's liability in respect of a claim for damage to the property or goods.

13. For the reasons stated hereinabvoe, the appeal succeeds. The impugned award dated 15/4/2016 is hereby set aside so far as against the appellant Insurance Company is concerned. It appears that, the Insurance Company has deposited entire amount under the award. The claimants have been permitted to withdraw a sum of Rs.1,00,000/- since the liability of Insurance Company was limited to that extent. It, however, appears that, the MACP was filed on 10/2/2012. It has been decided on 15/4/2016. The Insurance Company deposited the amount under the award

on 7/1/2016. The appellant Insurance Company is, therefore, directed to pay interest @ 7.5% p.a. on the sum of Rs.1,00,000/- from the date of the claim petition to the date of deposit of the amount. After deducting the amount towards interest to be paid by the Insurance Company, the remaining amount be paid back to it.

14. Rest of the terms of the impugned award stand unaltered.

First Appeal is disposed of accordingly.

In view of disposal of the First Appeal, pending Civil Applications are disposed of.

(R. G. AVACHAT)
JUDGE

fmp/-