IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 1041/2008

United India Insurance Company Ltd.,
Through Divisional Manager,
Divisional Office, Above Satish Motors,
Badnera Road, Amravati,
Tahsil and Distt. Amravati. **... APPELLANT**
(Respt. No.2 On R.A.)

----VERSUS----

1. Kisnabai Wd/o. Pundlikrao Sawarkar,
Aged 41 years, Occ. - Household,
R/o. Raipura, Achalpur, Tah. Achalpur,
Distt. Amravati.
(Petitioner)

2. Ganesh S/o. Pundlikrao Sawarkar,
Aged Major,
R/o. Achalpur, Tahsil Achalpur,
Distt. Amravati. **... RESPONDENTS**
(Respdt. No.1 On R.A.)

Mr. M. R. Joharapurkar, Advocate for the Appellant.
Mr. P. R. Agrawal, Advocate for the Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 07.12.2021.

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.

2. At the request of and with the consent of the learned Counsel for the parties, this appeal is taken up for final disposal.

3. Mr. M. R. Joharapurkar, the learned Counsel for the appellant basically raised the following two grounds in support of this appeal in the alternate and without prejudice to another:

a] That, in this case, the father of the owner of the insured vehicle was riding the motor vehicle and sustained injuries by allegedly trying to avoid stray cattle on the road. The learned Counsel submitted that in such circumstances, the claim was not maintainable under Section 163-A of the Motor Vehicle Act, 1988 (in short "M.V. Act") particularly as the father could not claim to be a third party in such circumstances;

b] In the alternate, it was submitted that the terms of the Insurance Policy made it clear that where the owner or driver was driving the vehicle, which met with an accident, involving some other vehicle, then, the liability of the Insurance Company can be restricted to the amount stated in the Insurance Policy. Mr. M. R. Joharapurkar, the learned Counsel for the appellant pointed out that in this case, the Insurance Policy has restricted the liability to Rs.1,00,000/-.

4. Mr. P. R. Agrawal, learned Counsel for the claimant submitted that the controversy raised in this appeal stands settled by the decision of the Hon'ble Supreme Court in ***Ramkhiladi and Another Vs. United India Insurance Company and Another***

reported in ***(2020) 2 SCC 550***. He pointed out that in this case, Hon'ble Supreme Court has held that a claim petition under Section 163-A of the M.V. Act, 1988 would not normally be maintainable by a borrower/permissive user of the vehicle against the owner or the insurer of the vehicle, as such borrower/permissive user steps into shoes of the owner, and the owner cannot both be claimant as well as the recipient. He pointed out that the Hon'ble Supreme Court has further held that in such a case, the claim of owner/borrower/permissive user would be limited to personal accident coverage re own-use of the vehicle, if any, strictly as per the contract of the insurance covering the borrowed vehicle. He, therefore, submits that there is a substance in the second contention of Mr. M. R. Joharapurkar and based on the same, the respondents-claimants would be satisfied if the liability in this case of the Insurance Company is restricted to Rs.1,00,000/- in terms of the Insurance Policy.

5. I have considered the rival contentions. Strictly speaking, this appeal will have to be allowed in its entirety because the Hon'ble Supreme Court has held that a claim petition under Section 163-A of the M.V. Act is not maintainable by the borrowers/permissive user of the vehicle against the owners/insurer of the said vehicle. However, the Hon'ble Supreme Court has, in the same judgment, also stated that the

owners/borrowers/permissive user would be entitled to some compensation from the Insurance Company but such compensation will have to be governed in terms of the contract of insurance covering the borrower vehicle. The Hon'ble Supreme Court has also held that the borrower/permissive user steps into the shoes of the owners.

6. Having regard to the aforesaid position, according to me, there is no point in requiring the respondent-claimant to institute fresh proceedings for recovery of the amounts under the policy. The evidence on record, in this case, establishes that the insured vehicle belongs to the son of the respondent-claimant. The respondent-claimant was in that sense a borrower or a permissive user of the vehicle. In terms of the decision of the Hon'ble Supreme Court, the respondent-claimant can thus be said to have stepped into the shoes of the owner of the insured vehicle.

7. Therefore, in terms of the Insurance Policy, the liability of the insurer will be restricted to Rs.1,00,000/- only. The respondent-claimant, through his learned Counsel, has expressed satisfaction to the modification of the impugned award in the aforesaid terms.

8. Accordingly, this appeal is partly allowed. The impugned award is modified and the liability of the Insurance Company is

now restricted to only Rs.1,00,000/-. No doubt, on this amount, the respondent-claimant will be entitled to interest as granted in the impugned award.

9. The respondent-claimant has already withdrawn some amounts that were deposited by the Insurance Company in this Court. The Registry will, therefore, have to recompute the entitlement based on this order and pay the respondent-claimant strictly in terms of the order now made. The balance amount will have to be returned to the appellant-Insurance Company along with the proportionate interest that may have accrued thereon. If, after the calculations, any amount has to be returned by the respondent-claimant, then, the respondent-claimant is to do so within 4 weeks from the date of such determination by the registry.

10. The appeal is partly allowed in the aforesaid terms. There shall be no order for costs.

11. Pending application(s), if any, do not survive(s) and even the same is/are disposed of.

(M. S. SONAK, J.)

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