IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1005 FIRST APPEAL NO.1187 OF 2004

1. The New India Assurance
Company Limited
Aashirwad Shopping Complex
Hat Darwaja, Nandurbar
Tq. and Dist. Nandurbar
Through its Divisional Manager ...Appellant
At Adalat Road, Aurangabad (Ori. Resp. No.3)

versus

1. Motilal Ramdas Chaudhari
Age 44 years, Occ. Trading/Now Nil
R/o. Sanjay Nagar, Nandurbar
District Nandurbar

2. Shabbirkha Dilawarkha Pathan
Age 36 years, Occ. Driver
R/o. Alisaheb Mohalla, Nandurbar
District Nandurbar

3. Salimkha Dilaarkha Pathan
Age 45 years, Occ. Jeep Driver
R/o. Sutar Mohalla, Nandurbar ...Respondents
Tq. and Dist. Nandurbar

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Mr. S. G. Chapalgaonkar, advocate for the appellant
Mr. M. H. Patil, advocate for respondent No.1
Mr. M. G. Kochar, advocate for respondent Nos. 2 and 3

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CORAM : S. G. DIGE, J.
DATED : 23rd SEPTEMBER, 2022

JUDGMENT:-

1. Being aggrieved and dissatisfied with the judgment and award passed by the Motor Accidents Claims Tribunal, Dhule (for short "Tribunal), in M.A.C.P. No. 873 of 1998, this appeal is preferred by the appellant-original respondent No.3-Insurance Company.

2. It is the contention of learned counsel for the appellant that the insurance policy was issued to the Jeep, it was registered as a private vehicle. Inspite of that, the driver of the said Jeep was carrying passengers by accepting fare from them. It is the breach of terms of insurance policy. The passengers in the said Jeep were travelling on hire and reward basis. In the F.I.R., it is mentioned that the passengers in the said Jeep were travelling by paying fare. It establishes that there was breach of the terms of policy but this fact is not considered by the Tribunal and awarded the compensation. Learned counsel for the appellant further submitted that the appellant has examined officer of Insurance company to prove the insurance policy and its terms and conditions but the said evidence is not considered by the Tribunal. Learned counsel for the appellant relied on the judgment of Supreme court in the case of ***Oriental Insurance Company Limited vs. Premlata Shuikla and others, reported (2007) 13 SCC 476*** and the judgment of this Court in the case of ***The New India Assurance Company Ltd. vs. Balu @ Balasaheb Sitaram Berad and others, reported in 2019 (5) ALL MR 360*** and requested to allow the appeal.

3. It is the contention of learned counsel for respondent No.3 that the F.I.R. was lodged by third party i.e. Police Constable and not by any eye witness. The Insurance policy of said offending Jeep shows that the Insurance is covered for 5+1 persons. Learned counsel further submits that no witness was examined to prove that the

passengers sitting in the said Jeep were fare paying passengers. The Tribunal has considered all aspects and passed the impugned judgment and order. Hence, order passed by the Tribunal is legal and valid.

4. I have heard learned counsel for both the parties, perused the judgment and order passed by the Tribunal.

5. The issue involved in this appeal is breach of terms and conditions of insurance policy. It is contention of learned counsel for the appellant that in the F.I.R. it is mentioned that the passengers travelling in the Jeep had paid the fare to the driver. The F.I.R. is exhibited document hence, contents of it are proved. F.I.R. is at Exh.28. The complaint was lodged by Kashinath Pardeshi, police constable. The police constable has recorded the statements of claimant/respondent No.1 and four other persons. In the statements of those four persons, they have stated that they have paid fare to the driver of the Jeep for carrying chili bags and accident was occurred due to rash and negligent driving of the Jeep driver. Accordingly, the crime was registered against the driver of Jeep. Admittedly, the F.I.R. is registered on the basis of complaint of police constable Kashinath Pardeshi. Thereafter, statements of driver of offending Jeep, original claimant and other persons are recorded. The persons, who have stated to the police constable that they have paid fare to the Jeep driver, are not examined before the Tribunal. Their statements are

not produced on record. The statements of claimant and Jeep driver on which basis the F.I.R. is filed are also not produced on record. Exhibit means a document exhibited for the purpose of being taken into consideration in deciding some question or other in respect of proceeding in which it is filed. The endorsement of an exhibit number does not mean that the document has been proved. The document is still to be proved as per the Indian Evidence Act and it's evidentiary value will be appreciated by the Court. The Hon'ble Supreme Court in the case of ***Narbada Devi Gupta vs. Birendra Kumar Jaiswal and Anr.*** reported in ***2003 Supp. (5) SCR 90*** held that mere marking of an exhibit on a document doesn't dispense with formal proof thereof. I have seen the corroboration to the facts mentioned in the F.I.R. It is the spot panchnama which is prepared on the same day, which is at Exh.39. In the F.I.R. it is mentioned that the passengers were travelling in the Jeep with chili bags but from the spot panchnama, it nowhere appears that chili bags or chilies were found on the spot. In the spot panchnama, it is specifically mentioned that no damage is caused to the chilies. In the accident the Jeep was turtled and damage was caused to the offending Jeep. The statements of four persons recorded by the police constable Kashinath Pardeshi specifically stated that other four passengers were carrying chili bags in the Jeep but the panchnama does not show the chilies or chili bags found on the spot. Moreover, in the cross examination of claimant, which is at Exh. 27, no suggestion was given to this witness that other persons were travelling with him as fare passengers. The appellant has examined their officer Subhash Puranik at Exh.41 to prove the policy which is at Exh.42. This witness has stated that the offending Jeep was registered as private car and policy is also issued for private car only. The risk of fare paying passengers or passengers carrying goods are not allowed. Exh.31 is the insurance policy which shows the licence of carrying capacity.

6. In my view, it is the appellant's stand that at the time of accident fare paying passengers were travelling in the offending Jeep and they were travelling on hire and reward basis. It was the burden on the appellant to prove this fact before the Tribunal as the F.I.R. was lodged on behalf of police constable. The persons, with whom the police constable enquired, were not examined before the Tribunal. The spot panchnama does not show that chili bags were found on the spot. The persons whose statements are recorded are not injured in the said accident nor filed any claim petition.

7. I have gone through the case laws cited by learned counsel for the appellant. The facts of the cited case and the facts in the case at hand are different. In the present case, the persons on whose statements the F.I.R. was lodged are not examined so also the persons whose statements are recorded by the police showing that they were fare paying passengers are not examined. In view of the above, I do not find any merit in the appeal. Hence, I proceed to pass the following order:-

O R D E R

The appeal is dismissed. No order as to costs.

(S. G. DIGE, J.)

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