IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.736 OF 2009

The Branch Manager,
The Oriental Assurance Company
Ltd., Dhule, Now represented
through the Sr. Divisional Manager,
Oriental Insurance Company Ltd.,
"Inderprakash", Adalat Road,
Aurangabad ... APPELLANT

VERSUS

1. Smt. Kathibai Pratapsingh Pawara,
Since deceased, through L.Rs.
(Respondents No.2 to 4)

2. Master Subhash Pratapsingh Pawara,
Age 24 years, Occ. Education

3. Master Vishwanath Pratapsingh Pawara,
Age 13 years, Occ. Education

4. Master Anil Pratapsingh Pawara,
Age 12 years, Occu. Education

All 1 to 4 above are
R/o Roshmel, Tq. Dhadgaon,
Dist. Nandurbar

(Respondents 3 & 4 being minors,
under the guardianship of their
natural mother i.e. respondent No.1)

5. Ravindra Govind Pawar,
Age 27 years, Occ. Driver,
R/o Kandawali, Tq. Dapoli,
District Ratnagiri

6. Vinayak S. Mahajans
Age adult, Occ. Matador Owner,

R/o Kandawale, Tq. Dapoli,
Dist. Ratnagiri. ... **RESPONDENTS**

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Shri M.K. Goyanka, Advocate for appellants
Shri C.R. Deshpande, Advocate for respondents No.1 to 4
Shri D.S. Kulkarni, Advocate for respondent No.6

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 3rd December, 2021

Date of pronouncing judgment : 31st January, 2022.

J U D G M E N T :

This is an Insurance Company's appeal, taking exception to the judgment and award, directing it to pay the amount of compensation first and then recover the same from the owner of the offending vehicle. It was a death claim preferred by widow and three minor children of the deceased Pratapsing, who died in vehicular accident. The Tribunal granted compensation of Rs.13,24,000/- with interest @ 9% p.a.

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

The deceased Pratapsing was 30 years of age. He was serving as a Primary teacher. On 5/9/2000, he was travelling in a Matador bearing No.MH-08/6545 (goods vehicle). The Matador met with the accident. As a result of the injuries suffered therein, Pratapsing breathed his last. Considering the monthly salary of the deceased at Rs.6000/- and making addition of 50% towards future prospects, the Tribunal granted the compensation of Rs.13,24,000/- inclusive of compensation on account of conventional heads. The Tribunal held the deceased to have been travelling as a gratuitous passenger in a goods vehicle and, therefore, held the owner of the Matador to be liable to pay the amount of compensation. Since the Matador had an insurance cover granted by the appellant Insurance Company, the Tribunal directed it to first pay the amount of compensation and then recover the same from the owner.

3. The learned counsel for the Insurance Company would submit that, there is no appeal or cross-objection preferred by either the owner of the offending vehicle or the legal representatives of the deceased (claimants). Admittedly, the deceased was travelling in a goods vehicle as an unauthorized passenger. The same constitutes breach of terms of conditions of the insurance policy. The risk of such passenger was not covered under the policy of insurance. The Tribunal, therefore, ought not to have been saddled with

the liability to first pay the amount of compensation and then recover the same. According to the learned counsel, such direction could only be passed by the Apex Court in exercise of its powers under Article 142 of the Constitution of India. According to the learned counsel, the quantum of compensation awarded is also on higher side. Learned counsel relied on the following judgments :

(1) United India Insurance Co. Ltd. Vs. Anubai Gopichand Thakare & ors. [2008(1) Mh.L.J. 73]

(2) National Insurance Company Ltd. Vs. Anand Sawant & ors. [2009(4) Mh.L.J. 280]

(3) Shamanna & anr. Vs. Divisional Manager, Oriental Insurance Company Ltd. & ors. (2018) 9 SCC 650

(4) United India Insurance Company Ltd. Vs. Sukumarbai w/o Suryakant Nikam & ors. (First Appeal No.2021 of 2018)

Learned counsel, therefore, urged for allowing the appeal.

4. The deceased was traveling in a goods vehicle. He was not traveling in the capacity as owner or representative of owner of the goods carried in the vehicle that met with the accident. As such, the deceased was the gratuitous/ unauthorized passenger in the goods vehicle (Matador). The Matador met with the accident. As a result of the injury

suffered therein, Pratapsing breathed his last. Admittedly, the policy of insurance did not cover the risk of gratuitous passenger carried in the goods vehicle. The appellant Insurance Company has, therefore, no liability, either contractual or statutory to pay amount of compensation granted under the impugned award. The learned counsel for the appellant was, therefore, justified in submitting that the Tribunal ought not to have directed the appellant Insurance Company to pay the amount under the impugned award and then recover the same. The learned counsel has, therefore, rightly relied on the Apex Court judgment in case of **National Insurance Co. Ltd. Vs. Baljit Kaur & ors. [(2004) 2 SCC 1]**. In the very judgment, however, the insurer was directed to satisfy the award and then recover the same from the owner of the vehicle by simply initiating the proceedings before the Executing Court without filing a separate suit.

5. Learned counsel for the appellant Insurance Company has also relied on the judgment of this Court in case of **United India Insurance Co. Ltd. Vs. Anubai Gopichand Thakare & ors. [2008(1) Mh.L.J. 73]**, wherein it has been observed that, directions which are given by the Apex Court to pay the amount/ satisfy the award and then recover the

amount from the owner of the vehicle are given in exercise of extraordinary jurisdiction under Article 142 of the Constitution of India and cannot be treated as a binding precedent. This Court cannot dispute the said proposition.

6. This Court has, however, time and again come across judgments of the Apex Court, of this Court and various High Courts as well, wherein, even in case the insurer is found to have no liability to pay compensation in the circumstances, similar to one in the case in hand, still the orders to satisfy the award and recover the amount have been passed. This Court, accepting the submissions of the learned counsel for the appellant Insurance Company is, however, not inclined to upset the impugned award in toto.

7. I have perused the following citations relied on by the learned counsel for the respondents – claimants :-

(1) National Insurance Company Ltd. Vs. Parvathneni & anr. (2018) 9 SCC 657

(2) National Insurance Company Ltd. Vs. Parvathneni & anr. [(2009) 8 SCC 785]

(3) National Insurance Company Ltd. Vs. Swaran Singh & ors. [(2004) 3 SCC 297]

(4) National Insurance Company Ltd. Vs. Laxmi Dhut (2007) 3 SCC 700

(5) Shamanna & anr. Vs. The Divisional Manager, the Oriental Insurance Co. Ltd. & ors.
(Civil Appeal No.8144/2018)

8. In case of National Insurance Company Ltd. Vs. Parvathneni (2009) 8 SCC 785 (supra), the validity of the directions to the Insurance Company was doubted. The matter was referred to the Hon'ble the Chief Justice of India for constituting a larger Bench for decision on the issue. The larger Bench did not entertain the petition under Article 136 of the Constitution of India in view of smallness of the amount involved. The question of law raised in the petition was kept open to be decided in an appropriate case.

9. The judgment in Swaran Singh's case (supra) pertained to non-holding of valid and effective driving licence by the driver because of whose rashness and negligence the accident took place.

10. When the claimants are not entitled to receive compensation from the insurer as of right, then it would be within the discretion of the Court to pass appropriate orders in the facts and circumstances of the case. The deceased herein was a primary teacher. Meaning thereby, he had a permanent job. On his demise, the claimants must have received service

benefits. Even one of them might have secured a job on compassionate ground. True, this has no bearing on the question of quantum of compensation. These facts, however, indicate that the claimants have somewhat financial security since the deceased was in Government service.

11. This Court has conceded to the submissions made by the learned counsel for the appellant Insurance Company. However, in the facts and circumstances of the case, this Court has proposed to direct the appellant insurer to satisfy 70% of the amount under the impugned award and then recover the same from the owner of the vehicle. This Court is, therefore, inclined to direct the appellant Insurance Company to pay 70% of the amount under the impugned award and then recover the same from the owner of the vehicle simply by initiating proceedings before the Executing Court without filing a separate suit.

12. With this, the appeal is allowed in terms of the following order :

O R D E R

(i) The direction in the impugned award to the appellant Insurance Company to pay the entire amount under the impugned award and then recover the same from the owner of the vehicle is modified as under :

(ii) The appellant Insurance Company is directed to pay 70% of the amount under the impugned award and then recover the same from the owner of the vehicle simply by initiating proceedings before the Executing Court without filing a separate suit. 70% of the amount in deposit be paid to the respondents/claimants with interest accrued thereon.

(iii) The balance amount be paid back to the appellant Insurance Company with interest accrued thereon.

(R. G. AVACHAT)
JUDGE

fmp/-