IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 2218 OF 2018

Royal Sundaram Alliance Insurance Co. Ltd,
Subramaniam Building II Floor, No.1,
Club House Road, Annasalai, Chennai-
600 002.
Through its Authorized Officer ... Appellant
(Orig. Res. No.3)

VERSUS

1. Sayed Wahidabegim w/o Sayed Ibrahim
Age : 45 Years, Occ. Household,
R/o. Balepper, Beed

2. Sayed Iliyas S/o Sayed Ibrahim
Age : 27 Years,Occ. Education,
R/o. As above

3. Sayed Arbaj S/o Sayed Ibrahim
Age : 14 Years, Occ. Education,
minor under guardianship of
Claimant No.1 R/o. As above. Resp. No. 1 to 3
(Orig. Claimant No.1 to 3)

4. Santosh S/o Hanumant Jogdan,
Age : Major, Occ. Business,
R/o. Barshi Naka, Beed.

5. Shaikh Abdul Javed S/o Shaikh Abdul Khadir,
Age : Major, Occ. Driver,
R/o. Gandhi Chowk, Kaij,
Tal. Kaij, Dist. Beed. Resp. No. 4 to 5
(Orig. Resp. No. 1 to 2)

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Advocate for appellant : Mr. A.R. Puranik
h/f Mr. A.S. Deshpande and S. S. Wagh
Advocate for respondent Nos. 1 to 3 : Mr. S.R. Shirsat

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CORAM : S. G. DIGE, J.

Reserved on 12.08.2022
Pronounced on : 19.09.2022

JUDGMENT :-

Being aggrieved and dissatisfied by the Judgment and award passed by the Member, Motor Accident Claim Tribunal, Beed, this appeal is preferred by the appellant/ insurance company original respondent No.3.

Brief facts of the case are as under :-

2. On 12th April, 2014 at about 12.15 p.m. deceased Sayyed Ibrahim was proceeding to his duty in Taxi Jeep No. MH-24-F- 3672. The driver of the said Jeep was driving the vehicle in rash and negligent manner and in a high speed. At the spot of incident, the driver of Jeep lost control of the vehicle and vehicle was turtled to one side, due to which, deceased sustained serious injuries. The deceased was taken to the Rural Hospital, Kaij, where Medical Officer of the Hospital declared him as dead. The crime was registered against the Jeep driver.

3. Respondent Nos.1 to 3/ original claimants filed claim petition before Member, Motor Accident claims Tribunal, Beed (for short the Tribunal) for getting compensation. The Tribunal has awarded the compensation. Against the said

Judgment and order this appeal.

4. It is contention of the learned counsel for the appellant that the Tribunal has not considered the fact that the deceased and other 13 passengers, were traveling in offending jeep. As per registration, capacity of offending Jeep six passengers were permitted in said Jeep there is breach of insurance policy. The Tribunal has not considered the fact that the appellant Insurance Company already settled five claims. Therefore, present claim is not liable to be settled. The Tribunal has considered monthly income of the deceased on higher side. Hence requested to allow the appeal. He relied on Judgment of this Court in ***First Appeal No. 433 of 2012 Sunil Subhashrao Ubale Versus Vandanabai Sarjerao Mhaske***.

4. It is contention of learned counsel for the respondents that the Tribunal has passed the order considering all the aspect. Though appellant has settled five claims the appellant has willfully avoided to settle the claim of the respondents, as the compensation was higher. The Tribunal has passed the order of pay and recover which is legal and valid. He relied on the Judgment of this Court in ***Oriental***

Insurance Company Ltd Vs. Habib Khaled Habib Mohammad and others (2020 (6) Mh. L. J.)

5. I have heard both the learned counsel. Perused judgment and award passed by the Tribunal.

6. The issue involved in this appeal is liability of the Insurance Company to pay the compensation amount to the passengers who were excess in number and recover it from the owner. Admittedly, the permitted capacity of passengers in the ill-fated jeep was 5+1 persons. The appellant has settled the claim of five persons. It is contention of the appellant that as appellant has settled claim of five persons, appellant is not liable to pay compensation to the respondents, whereas it is contention of the learned counsel for the respondents that as compensation of the respondent was on higher side hence claim of the respondents is not settled by the appellant. In my view, the Insurance company should have settled claim which was on higher side. The Hon'ble Apex Court in the case of ***National Insurance Company Vs. Anjana Shyam And Others (2007) ACJ 2129*** and other has held that the liability of the Insurance company to pay the award to the higher side claim. In the case at hand, it is alleged that the Insurance

company has avoided to settle the claim with the present respondents as it was on higher side, which is not proper. In respect of the pay and recover order, the Hon'ble Apex Court in case of ***United India Insurance Company Ltd Vs., K.M. Poonam and others 2011 AIR SCW 2801*** has observed that it is liability of insurance company is to pay compensation to excess passengers carried and recover that amounts from owner who is actually liable. I have gone through the case law cited by learned counsel for appellant the facts of cited case and case at hand are different. In the cited case there were no claims whereas in the case at hand there are excess claim's. In view of the above I pass the following order

ORDER

(i) The First Appeal is dismissed.

(ii) No order as to costs.

(S.G. DIGE,)
JUDGE

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