IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 513 OF 2004

M/s New India Assurance Co.Ltd., having its Head and Registered office at New India Ass. Building, 87 M.G. Mar, Mumbai and having Branch office at Parbhani, Divisional Office at Nanded and Aurangabad.) ...Appellant

Versus

1. Laxmibai w/o Bapurao Shinde, age 50 yrs, Occ: Household, & agril. R/o. Nardasagaon, Tq. Gangakhed, Dist. Parbhani.) ...Respondent

2. Nadeem Ahmed S/o. Khalil Ahmed Age Major, Occ: Tailoring & Business (Owner of Jeep) R/o. Padrabad Plot At Post, Tq. Dist. Parbhani.) ...Ori. Respdt No. 1

WITH
FIRST APPEAL NO. 377 OF 2004 WITH CA/676/2006

M/s New India Assurance Co.Ltd., having its Head and Registered office at New India Ass. Building, 87 M.G. Mar, Mumbai and having Branch office at Parbhani, Divisional Office at Nanded and Aurangabad.) ...Appellant

Versus

1. Sk. Wahid S/o. Sk. Baban, age 32 yrs, Occ: Meson R/o. Parbhani.) ...Respondent Ori. Claimant

2. Nadeem Ahmed S/o. Khalil Ahmed Age Major, Occ: Tailoring & Business (Owner of Jeep) R/o. Qadrabad Plot at Post,) ...Ori. Respdt No. 1

Tq. Dist. Parbhani.)
)
3. Amanulla Khan S/o Azgarkhan)
Pathan, Age Major, Occ. Driver)
Gulshanbag, Parbhani.)

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Mr. M. R. Deshmukh, Advocate for the Appellants in both Appeals.
Mr. Girish Rane, Advocate for the Respondent in FA/377/2004 and for Applicant in CA/676/2006.

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CORAM : R.M. JOSHI, J.

RESERVED ON : FEBRUARY 15, 2023
PRONOUNCED ON : MARCH 27, 2023

JUDGMENT

1. Appellant, Insurance company (Orig. Respondent) has filed these Appeals against common judgement and award dated 13.11.2003 passed by Member, MACT, Parbhani in MACP No. 79/1998 and 330/1998.

2. Since these Appeals arise out of common judgement and award passed by the Tribunal and involve common question of facts and law, they are decided together.

3. Claimants filed Petitions before the Tribunal for seeking compensation in respect of accident occurred on 04.01.1998 involving Jeep bearing No. MH-22-7550. It is the case of the claimants that they were traveling in the said jeep owned by the Respondent No.

2 as gratuitous passengers. According to them, there were 10 to 15 persons traveling in the said jeep at the relevant time. The jeep was driven in unreasonably high speed and as a result of which accident occurred. In the said accident, claimants sustained serious injuries and were required to undergo medical treatment. The claimants, therefore, filed the claim Petitions bearing no. 79/1998 and 330/1998 seeking compensation of Rs. 3 lacs and Rs. 1 lac respectively.

4. Respondent owner of the jeep filed written statement denying the claim of the claimants, however, it is not disputed that he is the owner of the jeep and that the said jeep was involved in the accident in question. He however claims that the accident did not cause due to over-speeding but on account of puncture of front Tyre of the jeep. There is however no dispute made about the fact that the person driving the jeep was authorised to drive it. He further claimed that jeep was duly insured with valid insurance policy with insurer. Driver, though is party to the claim Petition no. 79/98, did not contest the claim.

5. Insurer filed written statement denying

contentions raised in the claim Petitions. It is denied that the jeep was validly insured at the relevant time. However, at the same time it is contended that driver and owner of the jeep committed breach of the conditions of the policy and on that count, denied its liability to pay compensation.

6. Learned Tribunal framed issued and parties led evidence. Claimants examined themselves and relied upon documentary evidence i.e., FIR, spot panchnama, cover note, form AA and disablement certificate. On behalf of Respondent/Insurer, driver of jeep, investigator and officer of the company were examined. The owner of jeep did not lead evidence.

7. The claimants agreed that they were occupying the jeep as passenger. Evidence of driver shows that passengers were charged fare by him. Testimony of investigator shows that at the relevant time 12 persons were carried in the jeep as passengers and that accident occurred due to the negligence of driver of jeep. Learned Tribunal has recorded finding holding driver of jeep responsible for the accident and claimants sustained injuries in said accident. On

appreciation of evidence on record, the said findings are found proper. In fact, there is no serious dispute about the correctness of these findings recorded by the learned Tribunal.

8. Learned Counsel for the Appellant argues that the claimants were gratuitous passengers and since insurance policy was 'Act only Policy', gratuitous passengers cannot be considered as third party in order to fasten liability of the payment of compensation on insurer. He, therefore, restricts challenge to the impugned judgement to the extent of joint and several liability fasten on the Appellant insurance company to pay compensation. He further argues that consequently pay and recover order could not have been passed by Tribunal. He placed reliance on judgment of this Court in the case of *New India Assurance Co. Ltd. Vs. Lilabai Shrimant Misal and Others, 2014 (2) TN MAC 397 (Bom.)*.

9. Learned Counsel for the Respondents opposed the said contentions stating that the judgment in question was passed on the basis of the law then prevailed and therefore, order to pay and recover be maintained.

10. On the basis of evidence on record, it is established that in the instant case 'Act only policy' was obtained by owner of jeep from insurance company. The vehicle was not transport vehicle for carrying passengers therein. There was no statutory requirement to obtain policy in respect of occupiers/passengers of jeep, which is a private vehicle. The policy is on record and its terms are not in dispute. No premium is paid in respect of passengers carried in the jeep.

11. Learned Tribunal recorded finding that the passengers in the jeep were fare paying passengers and they were not gratuitous passengers. Learned Tribunal after considering case law relied upon has held claimants as third party and hence, in spite of breach of conditions of policy, insurer was held liable to pay compensation with liberty to recover the same from owner.

12. The question falls for consideration of this Court is as to whether Tribunal is justified in treating claimants as 'third party' and thereby making insurer jointly and severally liable to pay

compensation to the claimants without premium being paid by owner in respect of such passengers.

13. Chapter XI of Motor Vehicle Act, 1988, deals with Insurance of Motor Vehicles against third party risks. The provisions as they stood prior to Amendment of 2019, defines ‘third party’ under Section 145(g) as “third party includes Government”. Section 146 spells out necessity for insurance against third party risk. This prohibits use of motor vehicle in a public place without a insurance policy complying with requirements of this chapter. Section 147 deals with requirements of policies and limits of liabilities. In order to comply with requirements of this chapter, amongst others the policy of insurance must be a policy which insures person or classes of persons specifies in the policy. It mandatorily covers liability in respect of death or bodily injury to any person including owner of goods or his authorised representative or damage to property of third persons. It prescribes compulsory coverage against death or injury to any passenger of a “public service vehicle”. Finally it covers contractual liability.

14. The aforesaid provisions make it clear that the Act required statutory coverage of risks as provided in the cases aforesaid. The "Act only Policy" therefore could not be extended to any other risk not contemplated therein.

15. In the instant case vehicle involved in accident is not a public service vehicle in order to statutorily cover passengers therein. It was a private vehicle and the passenger therein could not be covered by the 'Act only Policy' irrespective of the fact whether he is 'gratuitous' or 'fare paying passenger'. Liability of such passenger can only be covered under contractual policy, since there was no statutory liability of owner to purchase policy in respect of passengers. In case of *New India Assurance Co. Ltd Vs. Asha Rani and Ors, AIR 2003 SC 687*, Hon'ble Apex Court has held that the term any person used in Section 147 & 149 of Act means 'Third Party' and not passenger. It is thus clear that the said definition cannot be extended to the person who occupies the vehicle involved in the accident.

16. Thus, it is settled law that if no premium is

paid in respect of passengers of a private car, there is no coverage of risk to them. In absence of payment of premium and thereby covering the risk of such passenger no liability can be fastened on insurance company to pay compensation. Learned Tribunal, therefore, committed error in holding that since claimants are fare paying passengers, they are third party and insurance company is liable to pay compensation jointly and severally, with liberty to recover it from owner/Insured. Resultantly, no direction to pay and recover also can sustain.

17. In view of the above discussion, the following order is passed :

O R D E R

(a) First Appeals are partly allowed.

(b) Impugned judgement and award against Appellant/Insurance holding it jointly and severally liable to pay compensation to the claimants is hereby set aside. Consequently, direction to pay and recover also stands set aside.

(c) Rest of judgement and award to remain unchanged.

(d) It is open for the claimants to recover the compensation from the owner of the vehicle.

(e) Amount deposited by insurer is permitted to be withdrawn.

(f) No order as to costs.

(g) In view of disposal of Appeals, pending application is also disposed of.

(R.M. JOSHI, J.)

Malani