IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 799 OF 2003

M/s Oriental Insurance Co. Ltd.
having its registered and Head office
at Oriental House, A/25 Asaf Alia Road,
New Delhi 110002 Branch at Jalna
and Divisional Office at Inder Prakash
Building, Adalat Road, Aurangabad
through its Divisional Manager &
Constituted Attorney Mr. A A. Hallari. Appellant

Versus

1. Vithal Baburao Golde
age 15 years, occ. Education.

2. Dnyaneshwar Baburao Golde
age 9 years, occ. Education

3. Drupadabai w/o Abaji Golde
age 56 years, occ. Nil

Claimants No. 1 and 2 u/g Claimant
No. 3
All r/o Revgaon,
Tq. & Dist. Jalna.

4. Navnath Pandurang Gaikwad
age 20 years, occ. Driver
r/o Ankute, Tq. Yeole
Dist. Nasik

5. Sanjay Ramchandra Nagpure
age major, occ. Business
r/o Yeole, Dist. Nasik. Respondents

Mr. V. N. Upadhye, Advocate for the appellant.
Mr. P. B. Patil, Advocate for respondents No. 1 to 3.

Mr. P. B. Lad and Mr. M. M. Shaikh, Advocate for respondent no. 5.

WITH
FIRST APPEAL NO. 800 OF 2003

M/s Oriental Insurance Co. Ltd.
having its registered and Head office
at Oriental House, A/25 Asaf Alia Road,
New Delhi 110002 Branch at Jalna
and Divisional Office at Inder Prakash
Building, Adalat Road, Aurangabad
through its Divisional Manager &
Constituted Attorney Mr. A A. Hallari. Appellant

Versus

1. Vithal Baburao Golde
age 15 years, occ. Education.

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age 56 years, occ. Nil

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age 20 years, occ. Driver
r/o Ankute, Tq. Yeole
Dist. Nasik

5. Sanjay Ramchandra Nagpure
age major, occ. Business
r/o Yeole, Dist. Nasik. Respondents

Mr. V. N. Upadhye, Advocate for the appellant.
Mr. P. B. Patil, Advocate for respondents No. 1 to 3.

Mr. S. S. Jadhavar, Advocate for respondent no. 5.

CORAM : R. M. JOSHI, J.
DATE :6th FEBRUARY, 2023.

JUDGMENT :

1. Being aggrieved by the judgment and award passed by Motor Accident Claims Tribunal, Jalna in M.A.C.P. No. 88/2000 and 89/2000 dated 23rd January, 2003, the present appeals are filed by respondent-insurer.

2. Since both appeals arise from same accident and involve similar facts and question of law, they are decided together by this judgment.

3. Both the claim petitions were filed by the minor children of deceased Baburao and Shobhabai under Section 166 of Motor Vehicles Act, 1988 (for short 'Act'). It is the case of the claimants that on 23rd February, 2000, when both Baburao and Shobhabai were proceeding on a bicycle towards Revgaon, a truck bearing No. MH-17/A-9698 owned by respondent No. 2 and insured by respondent No. 3 came from behind and gave dash to the bicycle. In the said incident, Baburao died on the spot whereas Shobhabai died while

she was being treated in the hospital. Both the sides lead evidence before the tribunal and by impugned judgment dated 23rd January, 2003, the claim petitions were partly allowed.

4. Perusal of the proceedings indicates that respondent No. 3-insurer had filed written statement denying the contentions of the claimants and it is specifically averred that the owner of the truck was not having valid driving licence and hence there is breach of conditions of policy.

5. In the present appeals, the only challenge to the impugned judgment is that the driver of the truck was not holding valid driving licence and hence there is breach of conditions of policy and as a result of which, the appellant-insurer is not liable to indemnify the insured.

6. In order to decide the controversy involved in the appeals, it would be necessary to note relevant provisions from Section 146 to 150 of the Act. Section 146 of the Act provides thus :-

> **146. Necessity for insurance against third party risks –**
> (1) No person shall use, except as a passenger, or cause or

> allow any other person to use, a motor vehicle in a public place, unless there is in force, in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirement of this Chapter.

7. Section 150 of the Act deals with duty of insurer to satisfy judgments and awards against persons insured in respect of third party risks. Section 150 of the Act reads thus :-

> **150. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks -**
> (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 164 is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the award any sum not exceeding the sum assured payable thereunder, as if that person were the decree holder, in respect of the liability, together with any amount payable in respect of costs and any sum payable

> in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

8. The conjoint reading of these provisions make it abundantly clear that it is mandatory for any insurer to cover risk of third party as there could not be any insurance contract excluding coverage of risk against third party and the defence of breach of condition of policy would be available in respect of contractual terms and not statutory obligation. Insurer is bound to indemnify the insured in respect of payment of compensation. By now, the law on the point of liability of Insurer to indemnify the insured against third party risk is fairly settled by catena of judgments of Hon'ble Apex Court. Reference can be made to the judgment in the case of National Insurance Co. Ltd. vs. Laxmi Narayan Dhut, **(2007) 3 SCC 700**. Considering the guidelines laid down in case of Suwarna Singh, the Hon'ble Apex Court has considered effect of insurance of a motor vehicle against third party risk in the context of obligations and liabilities relatable to the third parties. The statutory liabilities are fixed in Sections 147 and 149 of the Act and are not contractual. It is observed that, the terms of insurance policies should be considered as they are without adding or subtracting anything thereto. It is

finally held by Apex Court that on aspect of liability and rights of Insurer in a case of third party risks, the Insurer has to indemnify amount and if so advised can recover from insured. Thus, even if there is any violation or breach of condition of policy, the Insurer has to discharge the initial burden of proving grounds taken under Section 149(2) of the act and inspite of that, the Insurer has to indemnify the amount.

9. As far as facts of the present case are concerned, there is no dispute that the deceased who were third party met with an accident involving the concerned truck. It is further not in dispute that the owner of the truck was insured and there was valid policy issued by the insurer-respondent No. 3. Insofar as breach of condition of the policy, if any, such as want of valid driving licence by the driver of the vehicle, would not absolve the insurer from indemnifying the claim of the third party against the insured. Learned tribunal, therefore, has committed no error in making the insured as well as insurer jointly and severally liable for the payment of amount of compensation.

10. In the result, there is no merit in the appeals and appeals stand dismissed. Hence the following order :-

ORDER

(i) Both the appeal stand dismissed with no order as to costs.

(ii) Respondents No. 1 to 3 (original claimants) shall be entitled to withdraw the amount deposited by insurer in this Court in proportion as directed by the tribunal in the impugned judgment and award.

(iii) Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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