

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 282 OF 2003

The Divisional Manager,
United India Insurance Co. Ltd.,
Osmanpura, Aurangabad

Appellant

Versus

1. Kasabai Suryabhan Farkade
(Died) Through LRs
2. Sanjay Suryabhan Farkade
(Died) Through LRs
- 2A. Kalpana Sanjay Farkade
Atge : 40 yrs, occ : household
- 2B. Suhasini d/o Sanjay Farkade
Age : 21 yrs, occ : education
- 2C. Vishal s/o Sanjay Farkade
Age : 18 yrs, occ : education
- 2D. Dnyanesh s/o Sanjay Farkade
Age : 16 yrs, occ : education
Minor U/G of respondent No.2A
Mother.
3. Jayshree d.o Suryabhan Farkade
Age : 20 yrs, occ : student
4. Deepikarani d/o Suryabhan
Farkade, age : 11 yrs, occ : student
U/G of her real mother respondent
No.1 Kasabai

All above r/o Bankinola, Tal. Sillod,
District Aurangabad.
5. Ramdas Anna Pawar
Age : major, occ : nil
R/o Surewadi, Jalgaon Road,
Hudco, Aurangabad

Respondents

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Mr. S.V. Kulkarni, Advocate for the appellant.
Mr. A.S. Barloti, Adv. for respondent Nos.2A to 2D, 3 & 4.
Respondent No.5 served.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 11.07.2023.
Judgment pronounced on : 13.07.2023

Judgment :

1. By way of this appeal, the appellant – Insurance Company, who was the original respondent No.2, has challenged judgment and award dated 01.06.2002 in M.A.C.P. No.341/2000 passed by the learned Member, Motor Accident Claims Tribunal (hereinafter referred to as the “learned Tribunal”).

2. The facts giving rise to this appeal are as under :

. On 25.04.1999 at about 9.30 p.m. the deceased Suryabhan Farkade was coming from Sillod to Bankinhola alongwith one Ramdas Pawar who was riding the motorcycle and the deceased was pillion rider. As the said Ramdas Pawar drove the motorcycle rashly and negligently, it got slipped and the deceased sustained severe injury to his head and died on the spot. The present respondent Nos.1 to 4 being the original claimants had filed the aforesaid claim

petition and the learned Tribunal awarded compensation according to the impugned judgment and award by fixing joint and several liability upon the present appellant – Insurance Company and respondent No.5 Ramdas Pawar i.e. the rider of the motorcycle.

3. The learned Counsel for the appellant – Insurance Company submits that the learned Tribunal, by ignoring the fact that the claim petition was converted under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act”), wrongly decided the same under Section 166 of the Act. Moreover, the deceased being a pillion rider was not covered under the policy, but still the learned Tribunal awarded compensation to him by fixing the liability on Insurance Company. He also pointed out that the learned Tribunal had in fact erred in permitting the claimants to convert their petition under Section 166 into the petition under Section 163-A of the Act. As such, he prayed for dismissal of the original claim petition.

4. On the contrary, the learned Counsel for respondent Nos.1 to 4 – claimants supported the judgment and pointed out that though the claimants converted their initial petition under Section 166 into a petition under Section

163-A of the Act, but such concession obtained by their lawyer contrary to the legal provision, was illegal *ab initio* and therefore, the learned Tribunal who in fact decided the claim petition under Section 166 of the Act even after such conversion, has adopted proper course. According to him, since the policy of the offending motorcycle was comprehensive policy, the risk of deceased being a pillion rider was definitely covered. According to him, the learned Tribunal by discussing the negligence of the rider of offending motorcycle, has rightly determined the amount of compensation which is just and proper. As such, he prayed for dismissal of the appeal. He relied upon the recent judgment of the Hon'ble Apex court in the case of ***Kirti and another vs Oriental Insurance Co. Ltd.*** reported in ***(2021) 2 SCC 166***.

5. Heard rival submissions. Also perused the entire documentary and oral evidence on record alongwith the impugned judgment and award.

6. It is significant to note that the appellant – Insurance Company has challenged the impugned judgment and award mainly on three grounds viz; (1) whether the learned Tribunal justified in awarding compensation to the

claimants in respect of the death of pillion rider when the risk of pillion rider was not covered under the insurance policy (2) whether the learned Tribunal had jurisdiction to pass award for the amount more than claimed by the claimants and (3) whether the Tribunal had jurisdiction to convert the claim petition under Section 163-A into a petition under Section 166 of the Act.

7. So far as the first ground is concerned, perusal of the impugned judgment itself shows that the insurance policy under which the offending motorcycle was insured, was comprehensive policy. It is significant to note that the pillion rider is not treated as third party in case of “Act policy” and his risk is not covered unless premium to that effect is paid. However, in the instant case, the policy was not an “Act policy”, but it was a comprehensive policy, and therefore, the risk of pillion rider was very well covered under that policy. Thus, there is no substance in the first ground raised by the appellant – Insurance Company to challenge the impugned judgment.

8. So far as the second ground is concerned, it is important to note that the learned Tribunal is always under liability to determine just compensation to the victims of the

accident and even if it crosses the amount of compensation as claimed by the claimants, it is justified. Therefore, considering the benevolent object of this legislation, there is absolutely no force in the submission of the learned Counsel for the appellant – Insurance Company in respect of the said ground.

9. Now, I come to the third ground of challenge. The learned Counsel for the appellant – Insurance Company is claiming that the learned Tribunal has definitely erred in deciding the claim petition of the claimants under Section 166 despite it was converted by the claimants under Section 163-A of the Act. It is significant to note that the impugned judgment itself shows that the respondents – claimants had initially filed the claim petition under Section 166 of the Act, but thereafter on the advice of their Advocate, they converted the same under Section 163-A of the Act. However, on perusal of the impugned judgment, it is clearly evident that though such conversion was made by the respondents – claimants, the learned Tribunal has decided the same by treating it as a petition under Section 166 of the Act. Further, the learned Tribunal has also decided the negligence of present respondent No.5 in the accident which was necessary

for the decision of the petition under Section 166 of the Act. Further, it appears that the learned Tribunal has observed that when the monthly salary of deceased was found to be more than Rs. 7,000/-, then it was just for it to decide the claim under Section 166 and not under Section 163-A of the Act, so that the litigants should not suffer due to fault of an Advocate. Thus, it appears that the learned Tribunal suo-moto decided to treat the petition under Section 163-A into a petition under Section 166 of the Act.

10. The learned Counsel for respondent Nos.1 to 4 – claimants, in view of the aforesaid observation of the learned Tribunal, has relied upon the observation of the Hon'ble Apex Court in the case of *Kirti vs oriental Insurance Co.Ltd* (supra). In the said judgment the Hon'ble Apex Court has discussed as to how the concession taken by the Counsel for the parties would not binding upon them. It has been observed that any concession in law made by the Counsel which hampers the right of his clients would not binding on them as the Advocates cannot through away legal rights of the parties or enter into arrangements contrary to the law. As such, it appears that the learned Tribunal has rightly applied his mind to safeguard the interest of claimants in deciding the

petition under Section 166 despite it being converted into a petition under Section 163-A of the Act.

11. It is extremely important to note that this Court, in the case of ***New India Assurance Co. Ltd vs Latabai Madhav Sarode and others*** reported in ***2009 (1) Bom.C.R. 304*** has observed that conversion of petition under Section 163-A into a petition under Section 166 of the Act is permissible. It is observed by this Court in the aforesaid judgment as below :

“The learned counsel appearing for the first and second respondents submitted that in the event the Court is of the view that the claim petition under Section 163-A is not maintainable, the same may be allowed to be converted into the claim petition under Section 166 of the said Act. Relying upon the decision of this Court in the case of (New India Assurance Co. Limited Vs. Rukhminibai w/o Ashok Gore), First Appeal No.1349 of 2004, the learned counsel submitted that the Division Bench of this Court has held that the conversion of a claim petition cannot be allowed. In first Appeal No.979 of 2007, this Court after considering the aforesaid decision of the Division Bench has held that the Tribunal as well as this Court always has a discretion to allow the conversion of a claim petition under Section 163-A into a claim petition under Section 166 of the said Act”.

Thus, in view of the aforesaid observation, I find no force in the submission of the learned Counsel for the appellant – Insurance Company that the learned Tribunal wrongly decided the petition under Section 166 despite it

being already converted into Section 163-A of the Act. Further, it appears that there is no apparent error in assessing just and reasonable compensation at the hands of the learned Tribunal. Therefore, considering all these facts there is no substance in the appeal and accordingly it stands dismissed. In view of dismissal of the appeal. The appellants are permitted to withdraw the balance amount of compensation, if any, alongwith interest accrued thereon till date. Accordingly, pending civil application stands disposed of.

(SANDIPKUMAR C. MORE, J.)