**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO.3051 OF 2017
WITH
CIVIL APPLICATION NO.2350 OF 2022**

United India Insurance Co. Ltd;
Through it's Divisional Manager and
Aurhtorised representative & Signatory,
Sangamner Divisional Office,
Hotel Karam Building, Opposite S.T.
Stand, At & Post & Taluka :
Sangaamner-422605,
District : Ahmednagar .... APPELLANT
(Ori. Resp.No.1)

VERSUS

1. Shivajirao Balasaheb Deshmukh,
Age : 67 years, Occu.: Service

2. Latabai Shivajirao Deshmukh,
Age : 62 years, Occu.: Housewife,
Res. No.1 & 2 both R/o.: Anand
Housing Society, in front of
Malpani House, At & Post :
Sangamner, Tal. Sangamner,
District : Ahmednagar

3. Ramdash Maruti Bankar,
Age : Majopr, Occu.: Nil,
R/o.: Mali Zap, Akole, Tal. Akole,
District : Ahmednagar ... RESPONDENTS
(Nos.1 & 2 Ori. Claimants,
No.3 Ori. respondent No.2)

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Advocate for Appellant : Mr. A. B. Gatne
Advocate for Respondent No.1 : Mr. A. Z. Gandhi

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 24/01/2023
PRONOUNCED ON : 14/03/2023

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JUDGMENT :

1. The appellant - insurance company, who was original respondent No.1 in MACP No. 15 of 2006, has challenged the judgment and award dated 27/10/2016 passed by the learned Member, Motor Accident Claims Tribunal, Sangamner (hereinafter referred to as 'the learned Tribunal') on the ground that since the deceased himself was driving the car and held responsible for causing of the accident by the police, the claimants, who are present respondent Nos.1 & 2, are not entitled for any compensation.

2. The background facts are as under :

That on 18/04/2005 at about 8.30 p.m., deceased Sachin Shivajirao Deshmukh was travelling by a Maruti Car bearing registration No. MH-12-CB-8888 from Rahata to Sangamner along with certain persons. He himself was driving the said car. At the relevant time, at Samnapur, one Truck came from opposite side with high focus without using any deeper. Deceased Sachin, to avoid accident with that Truck, suddenly took his car on the left side of the road and dashed to one tree, resulting into his accidental death.

3. The learned counsel for the appellant - insurance company pointed out that the deceased had borrowed the said vehicle and

therefore, stepped into the shoes of owner. He further submits that the accident had occurred due to sole negligence of the deceased / borrower / driver of the vehicle and therefore, the legal heirs of such borrower / driver could not have claimed compensation on the principle that owner and claimant could not be a same person and the claimants therefore, could not have taken benefit of own wrong of the deceased. In the alternative, he submitted that the learned Tribunal should have restricted the compensation amount to the tune of Rs.2,00,000/- as per the terms and conditions of the insurance policy. He also placed reliance on following judgments :

A) New India Assurance Company Limited vs. Sadanand Mukhi and others, reported in (2009) 2 SCC 417;

B) Oriental Insurance Co. Ltd. vs. Jhuma Saha (Smt.) and others, reported (2007) 9 SCC 263;

C) Oriental Insurance Company Limited vs. Rajni Devi and others, reported in (2008) 5 SCC 736;

D) Ningamma and another vs. United India Insurance Company Limited, (2009) 13 SCC 710 and

E) Ramkhiladi and another vs. United Insurance Company and another, reported in (2020) 2 SCC 550;

4. On the contrary, the learned counsel for the respondents - claimants submits that the claimants are definitely entitled for compensation as the deceased was not solely negligent but it was the Truck who had in fact caused the accident and therefore, the learned Tribunal rightly awarded compensation by reducing it to the extent of 50% on account of negligence of the deceased. He pointed out that since the policy under which the Maruti Car was

insured, was a comprehensive policy, the risk of the deceased was covered without any limitation. He also placed reliance on following judgments :

A) First Appeal No.784 of 2007 (Dhiraj Mahaveersingh Chandel and another vs. Smt. Usha Kishor Bingewar and others), decided on 26/07/2022 ;

B) United India Insurance Co. Ltd. vs. Sudha Singh, reported in LAWS (PAT)-2014-40 (High Court of Patna)

C) National Insurance Company Limited vs. Balakrishnan and another, (2013) 1 SCC 731;

D) Amrit Lal Sood and another vs. Kaushalya Devi Thapar and others, (1998) 3 SCC 744;

E) National Insurance Co. Ltd. vs. Nirmala Bai, reported in LAWS(RAJ)-1999-1-61 (High Court of Rajasthan at Jaipur);

F) Branch Manager, the New India Assurance Co. Ltd. vs. Urmila Biswakarma, reported in LAWS(SIK)-2022-5-11 (High Court of Sikkim) and

G) New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanmal Aswaniand others, reported in AIR 1964 SCC 1736.

5. Nobody appeared on behalf of respondent Nos.2 & 3.

6. With the able assistance of both the learned counsel for the rival parties, I have gone through the impugned judgment, citations submitted and the record & proceedings of the original Claim Petition No. 15 of 2006.

7. It is significant to note that the manner in which the accident took place, is not in dispute. Moreover, at the time of accident, the

offending Maruti Car was insured with the appellant - insurance company. The only point involved in this appeal is as to whether the deceased being stepped into the shoes of owner, could have been benefited on account of his own wrong since the police machinery after due investigation held him responsible for the accident. It is extremely important to note that the policy with which the offending car was insured with the appellant - insurance company is at Exhibit-39 and 40. The cover note at Exhibit-39 of the said policy clearly indicates that it was a package policy that means a comprehensive policy. Further, copy of policy at Exhibit-40 clearly indicates that net amount towards premium of Rs.12,234/- was paid, which was inclusive of risk cover of four passengers along with compulsory risk cover of owner and driver to the extent of Rs.2,00,000/- each. Now the question is that as to whether the deceased being stepped into the shows of owner of the car i.e. present respondent No.3 was entitled for compensation since he himself gave dash to a Neem tree without there being any collision in the alleged Truck who had come from the opposite direction at the time of accident.

8. It is significant to note that the FIR at Exhibit-34, which was lodged by one of the occupants of the offending car, clearly speaks about the said Truck and due to intensive head-light of the said Truck, the deceased had to take his car by the side of the road to avoid the accident. The learned Tribunal has also observed these facts and held the said Truck responsible for the accident to the extent of 50%. It is to be noted that the complainant Vijay Nirmal has also been examined on behalf of the respondents - claimants and he has deposed so. Further, the spot panchanama Exhibit-36

also indicates that the Neem tree to which the Maruti Car involved in the accident, had given dash, was situated at a distance of 5 fts., from the tar road. Thus, it can easily be inferred that the deceased must have given dash to the Neem tree only to avoid the accident since the said Truck had come from the opposite side without using the deeper. Thus, the observation of the learned Tribunal that the Truck and the deceased contributed in the accident to the extent of 50% each appears proper.

9. The learned counsel for the appellant - insurance company though relied on certain judgments namely ***New India Assurance Company Limited vs. Sadanand Mukhi and others,*** (supra) and ***Oriental Insurance Co. Ltd. vs. Jhuma Saha (Smt.) and others,*** (supra), wherein it is observed that in case of accident caused by the son of owner or the owner himself, the legal representatives or dependents of the same, cannot claim compensation on account of their own fault and in such cases insurance company cannot be held liable. However, this is not the case here. It is to be noted here that the deceased at the time of accident had borrowed the said Maruti Car from its owner i.e. present respondent No.3 and he was not the sole person responsible for the accident. As said earlier, the learned Tribunal has already reduced the compensation by 50% on account of own negligence of the deceased. Further, to rebut the submission of the learned counsel for the appellant - insurance company, the compensation could not be awarded on account of own fault of the deceased, the learned counsel for the respondents - claimants relied on the judgment of the Hon'ble Apex Court in case of ***New Asiatic Insurance Co. Ltd.***

vs. Pessumal Dhanmal Aswaniand others, (supra). It is clearly observed in the aforesaid judgment as follows :

> *"3. .... The company will indemnify any driver who is driving the motor car on the insured's order or with his permission, provided that such driver (a) is not entitled to indemnity under any other policy."*

As per this observation of the Hon'ble Apex Court even the third party insurance covers the risk of person who is driving the car with permission of the insured provided such person was not indemnified under any other policy. In the instant matter, the policy of the offending car is comprehensive policy and a premium for covering the risk of owner and driver has also been accepted. Thus, there can be no doubt that the risk of the deceased was covered under the said policy as it was comprehensive / package policy.

10. The other judgments relied upon by the appellant - insurance company are in respect of maintainability of the claim under Section 163A of M. V. Act in respect of the deceased by whose negligence the accident has taken place. However, this being the claim petition under Section 166 of M. V. Act and already being held as tenable, there is no need to discuss those judgments.

11. The learned counsel for the appellant - insurance company in the alternative strenuously argued that as per the policy, the deceased was only liable for the compensation of Rs.2,00,000/-. However, this issue of limiting the compensation has already been dealt by the Hon'ble Apex Court in the case of ***United India***

Insurance Company vs. Tilak Singh and others, reported in II(2006) ACC 1 (SC) and Ashrani's case reported in (2003) 2 SCC 223. The learned counsel for the respondents-claimants has relied on judgment of this Court Bench at Nagpur in ***First Appeal No.784 of 2007 (Dhiraj Mahaveersingh Chandel and another vs. Smt. Usha Kishor Bingewar and others)***, decided on 26/07/2022, wherein there is an observation of Apex Court, who had considered Insurance Regulatory and Development Authority (for short 'IRDA') circular and instruction issued by Tariff Advisory Committee. The Apex Court in paragraph Nos. 19 and 20 has observed as under:

> *"19. It is extremely important to note here that till 31st December, 2006 the Tariff Advisory Committee and, thereafter, from 1st January, 2007, IRDA functioned the statutory regulatory authorities and they are entitled to fix the tariff as well as the terms and conditions of the policies by all insurance companies. The High Court had issued notice to the Tariff Advisory Committee and the IRDA to explain the factual position as regards the liability of the insurance companies in respect of an occupant in a private car under the "comprehensive/ package policy". Before the High Court, the Competent Authority of IRDA had stated that on 2nd June, 1986, the Tariff Advisory Committee had issued instructions to all the insurance companies to cover the pillion rider of a scooter/motorcycle under the "comprehensive policy" and the said position*

continues to be in vogue till date. It had also admitted that the "comprehensive policy" is presently called a "package policy". It is the admitted position, as the decision would show, the earlier circulars dated 18th March, 1978 and 2nd June, 1986 continue to be valid and effective and all insurance companies are bound to pay the compensation in respect of the liability towards an occupant in a car under the "comprehensive/ package policy" irrespective of the terms and conditions contained in the policy. The competent authority of the IRDA was also examined before the High Court who stated that the circulars dated 18th March, 1978 and 2nd June, 1986 of the Tariff Advisory Committee were incorporated in the Indian Motor Tariff effective from 1st July, 2002 and they continue to be operative and binding on the insurance companies. Because of the aforesaid factual position, the circulars dated 16th November 2009 and 3rd December, 2009, that have been reproduced hereinabove, were issued.

20. It is also worthy to note that the High Court, after referring to individual circulars issued by various insurance companies, eventually stated thus:-

"In view of the aforesaid, it is clear that the comprehensive/package policy of a two wheeler

covers a pillion rider and comprehensive/ package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC's directives and those of the IRDA, such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

12. Thus, it has been made clear by the Hon'ble Apex Court that in case of comprehensive / package policy, the insurer is bound to pay compensation towards an occupant in car irrespective of terms and conditions contained in the policy. Admittedly, the policy in this matter is comprehensive / package policy. Moreover, a premium for covering the risk of driver and owner has also been taken by the appellant - insurance company. Therefore, the question of limiting the compensation amount of Rs.2,00,000/- as per the policy condition will not arise specially in the light of aforesaid observation of the Hon'ble Apex Court.

13. Therefore, considering all these aspects, I find that the finding of the learned Tribunal that respondents-claimants are entitled for compensation as awarded by considering the reduction to the extent of 50% towards the negligence of the deceased,

appears proper and therefore, there is no need to interfere in the same. Thus, the respondent Nos.1 & 2 are permitted to withdraw the entire amount of compensation as deposited in this court by the appellant - insurance company alongwith the accrued interest thereon till date. Accordingly, the appeal stands dismissed and pending Civil Application No.2350 of 2022 also stands disposed of.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-