

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2928 OF 2008

1. New India Assurance Company Ltd.,
Branch – Latur,
Through its Divisional Manager,
Adalat Road, Aurangabad

... Appellant
(Ori. Respondent No.2)

VERSUS

1. Bhalchandra Narsing Ingle,
Age : 25 years, Occ.: Labor work,
R/o. : Deoni, Tq. Deoni, Dist. Latur
2. Ajay Kundan Tupe,
Age : Major, Occ. : Vehicle Owner,
R/o. : Sadunana Tupe Vasti, 17
1/2 Nali Tupevasti, Hadapsar, Pune

... Respondents
(Resp. No.1 – Orig. Claimant,
Resp. No.2 – Orig. Resp. No.1)

...

Mr. Mohit R. Deshmukh – Advocate for Appellant
Mr. Sanjay Mundhe – Advocate for Respondent No.1

....

CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 12th April, 2023
PRONOUNCED ON : 13th April, 2023

JUDGMENT :

1. The appellant – Insurance Company in this appeal has challenged the judgment and award dated 29th March, 2008 passed by the Motor Accident Claims Tribunal, Udgir, Dist. Latur,

(hereafter "*learned Tribunal*" for short) in M.A.C.P. No. 16 of 2007 only on the ground that, the learned Tribunal held the Insurance Company liable for the compensation to the claimants despite the fact that, the offending insured Bus was driven in contravention of permit guidelines violating the conditions of the policy.

2. However, the learned counsel for the respondent No.1 – claimant produced on record the copy of judgment in First Appeal No.2926 of 2008 arising out of the judgment and award in respect of the same accident. The learned counsel for the respondent No.1 submits that, the ground of this appeal in respect of breach of policy condition by violating the terms of permit has been elaborately discussed by this Court in the aforesaid judgment dated 24th July, 2020 and it is ultimately held that, there was no breach of policy condition on the part of insured, as no condition of permit in respect of the offending Bus was violated.

3. The learned counsel for the appellant – Insurance Company has also admitted the said fact after going through the judgment dated 24th July, 2020 in First Appeal No. 2926 of 2008. Thus, the present appeal can be disposed of in view of the discussion made therein as regards the violation of permit.

4. It is to be noted here that, this appeal as well as First Appeal No. 2926 of 2008 are arising out of the same accident and same ground of challenge i.e. violation of condition in the permit of same offending Bus. It is significant to note that, this Court in the judgment passed in First Appeal No.2926 of 2008 in paragraph No.22 has made following observations :

“22. In the instant case, the copy of permit produced at Exh.51 is a special permit issued u/s 88 (8) of Motor Vehicles Act, 1988 by the competent authority authorizing the owner to ply the bus on a route beyond the route mentioned in the permit issued u/s 72 of Motor Vehicles Act. The special permit [Exh.51] was issued by transport authority for use of said bus from Pune to Udgir and back to Pune. The accident occurred on 13/08/2006. The permit [Exh.51] clearly provides that the permit granted for 13/08/2006 to 14/08/2006 to said bus for carriage of passenger from Pune to Udgir. The commencement of permit has started by the mid night of 12/08/2006 and valid up to mid night of 14/08/2006. The permit was obtained prior to 13/08/2006. The accident occurred after the mid night of 12/08/2006 i.e. on 13/08/2006. In that view, at the time of accident the special permit [Exh. 51] was in force to ply the bus beyond the area of operation as provided under permit [Exh. 50]. The respondent No.3 has adduced no evidence to prove that the bus started at about 11.00 p.m. on 12/08/2006 and thereby there was violation of condition of policy. Even assuming that bus started at about 11.00 p.m. on 12/08/2006 and accident occurred on 13/08/2006, still at the most same may provide cause to transport authority to prosecute the respondent No.2 for violation of condition

of special permit. In that view, there is no merit in the contention of learned counsel for appellant that there was breach of policy condition on the part of respondent No.2 and the Tribunal has committed error in foisting the liability against appellant/insurance company. The findings recorded by Tribunal to Issue No.2 are consistent with evidence adduced in the case. There is absolutely no perversity in the Judgment and Order passed by Tribunal so as to call for interference in exercise of appellate jurisdiction of this Court.”

5. Thus, it appears that this Court has elaborately discussed the main ground of challenge in this appeal as aforesaid and has come to the conclusion that there was no perversity in the judgment and order passed by the learned Tribunal. The aforesaid observation is squarely applicable to the present appeal as it is arising out of the same accident. Therefore, there is no reason to take contrary view on the aspect of breach of condition of permit. Thus, the instant appeal stands dismissed.

**[SANDIPKUMAR C. MORE]
JUDGE**