IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 161 OF 2004

M/s New India Assurance Co. Ltd.
having its Regd. & Head Office at
The New India Assurance Building
87, M. G. Road Fort, Bombay Branch Office
at Jalna and Divisional Office No. II
323-324 N/3, CIDCO, Jalna Road
Aurangabad 431 003 through its
Divisional Manager & Constituted
Attorney Mr. Vishwas Bansi Gaikwad — Appellant

Versus

1.	Gangabai w/o Babulal Chandre age 23 years, occ. Household work	Dismissed vide Hon'ble Court order dated 17.07.2003 (respondents 1 and 2)
2.	Madan s/o Babulal Chandre age 11 years, occ. Nil.	
3.	Kesarbai w/o Mohan Chandre age 50 years, occ. Nil. R/o Devgaon Tanda, Tq. Badnaupr, Dist. Jalna.	
4.	Gokulchand s/o Jethulal Agrawal	Dismissed vide order dt. 21.02.2008
5.	Ashok s/o Nilkanthrao Deshmukh	Abated vide order dt. 21.02.2008

Respondent

Mr. V. N. Upadhye, Advocate for the appellant.
Mr. Sham. B. Patil, Advocate for respondent No. 3.

WITH
FIRST APPEAL NO. 416 OF 2002

M/s New India Assurance Co. Ltd.
having its Regd. & Head Office at
The New India Assurance Building
87, M. G. Road Fort, Bombay Branch Office
at Jalna and Divisional Office No. II
323-324 N/3, CIDCO, Jalna Road
Aurangabad 431 003 through its
Divisional Manager & Constituted
Attorney Mr. Vishwas Bansi Gaikwad Appellant

Versus

1. Nirmalabai w/o Devji Mendhre
age 25 years, occ. Household work

2. Magan s/o Asaram Mendhre
age 50 years, occ. Nil

3. Mamtabai w/o Magan Mendhre
age 40 years, occ. Nil

All r/o Somthana Dist. Jalna.

4. Gokulchand s/o Jethulal Agrawal
age 45 years, occ. Business
r/o Shrikrishna Peth,
Amravati.

5. Ashok s/o Nilkanthrao Deshmukh
age 30 years, occ. Driver
r/o Bharati Plot, Akola. Respondents

Mr. V. N. Upadhye, Advocate for the appellant.
Mr. Sham. B. Patil, Advocate for respondent No. 3.

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

JUDGMENT :

1. First Appeal No. 416/2002 taken on board upon being mentioned by learned counsel for the appellant.

2. Being aggrieved by the judgment and award passed in MACP No. 37/1998 and 38/1998 dated 4th October, 1998 MACT, Jalna, the appellant-Insurer has preferred these appeals.

3. Since both appeals arise from same accident and as they involve similar question of facts and law, they are hear and decided together.

4. The facts giving rise to these appeals, in brief are thus :-

On 12th August, 1997, an accident occurred near Chikhali Pethe Shivar when motor vehicle No. MH-21/5408 occupied by Babulal Chandre and another deceased was given dash by Truck bearing registration No. MH-G-3865. In the said accident, both died and some other persons were also injured. Claim petition was filed for claiming compensation against Driver, Owner and Insurer of Truck No. MH-G-3865. It is alleged that the accident in question has occurred due to the negligence of driver of truck.

5. Insurer rebutted the claim on the ground that insured had no valid and effective licence to drive the truck and that there is breach of terms of policy.

6. Subsequently, parties entered into terms of compromise before Lok Adalat, subject to production of motor driving licence as the licence produced on record by claimants was not full but in part. Since the motor driving licence was not produced the said awards are challenged.

7. The only challenge to the impugned awards is that the claimants have failed to comply with the conditions incorporated in the compromise in the Lok Adalat. It is the contention of the Insurer that it was agreed between the parties that the claimants shall produce motor driving licence and since the same is not produced the Insurer is not liable for payment of any compensation to them.

8. At the outset, it needs to be recorded that Section 21 of Legal Services Authorities Act, 1987, provides that every award made by Lok Adalat shall be final and binding on all parties to the dispute

and no appeal shall lie to any Court against the award. Thus, the award passed in the Lok Adalat cannot be taken exception to unless strong reasons are adduced to recall the compromise. Here in this case, it is contended by the appellant that in the compromise terms agreed between the parties, there was a condition to produce motor driving licence in respect of which objection was raised by the Insurer in the written statement. The question would be whether such condition would be valid and breach thereof has any consequence upon the liability of Insurer to pay compensation.

9. There is no dispute about the fact that compromise between the parties was voluntary and that it is not a case of any fraud or mis-representation being played upon by the claimants on the Insurer. As far as fact about involvement of vehicle Truck No. MH G 3865 in accident and it being validly insured with the Insurer are not in dispute. Further undisputedly, deceased were occupying another vehicle and not travelling in truck in question. Hence, even in case of breach of condition of contract, if any, between the Insurer and insured, the right of claimants as third party to claim compensation from both is not affected. In this regard, reference can be made to Sections 146 to 150 of Motor Vehicles Act. 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.

10. In the fact and circumstances of the case and considering position of law regarding liability of Insurer to pay compensation even in case of breach of terms of insurance contract vis a vis third party, the condition of furnishing driving license becomes redundant. Non-compliance thereof would not given any right to Insurer to deny the liability of payment of compensation. Hence challenge to the impugned awards passed in the Lok Adalat must fail. Consequently, appeals stand dismissed. No order as to costs. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb