IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2198 2020

The New India Assurance Company Ltd.,
Through it's Assistant Manager (Legal Hub),
D.O. No.I, Adalat Road, Aurangabad.
Avinash Achyutrao Bugdani,
age 56 yrs, Occ. Service,
Assistant Manager, R/o. Aurangabad.
Dist. Aurangabad. ...Appellant..
(orig. Resp No.3.)

Versus

1. Abaji s/o Yamaji Bhaskar,
age 71 yrs, Occ. Agriculturist,
R/o Murma, Tq. Newasa,
Dist. Ahmednagar.

2. Raju s/o Keru Wagh,
age major, Occ. Business,
R/o Sonai, Tq. Newasa,
Dist. Ahmednagar and
Vasant Tekdi Parisar,
Ahmednagar, Dist. Ahmednagar.

3. Babasaheb s/o Popat Jare,
age major, Occ. Driver,
R/o Jeur Baijabai,
Tq. & Dist. Ahmednagar. ..Respondents..
(R-1 orig. claimant
R-2 & 3, orig. R-1 & 2)

...

Mr. S.R. Bodade Advocate for appellant.
Mr. A.S. Gandhi, Advocate for respondent No.1

...

CORAM : S.G. CHAPALGAONKAR, J.

...

RESERVED ON : 27th JULY, 2023.
PRONOUNCED ON : 18th AUGUST, 2023.

...

JUDGMENT :-

1. The appellant/original respondent no.3-Insurance Company impugns the judgment and award dated 2.1.2020 passed by the Motor Accident Claims Tribunal, Newasa, District Ahmednagar in MACP No.451 of 2014.

The respondent no.1/original claimant had approached the Tribunal seeking compensation of Rs.5.00 Lakh under the provisions of Section 166 of the Motor Vehicles Act from the owner and insurer of the Pickup van bearing registration No.MH-17/K-7593 towards death of Horse/Livestock owned by the claimant. The contention of the claimant is that offending vehicle came from Aurangabad side and gave forceful dash to the Horse. The accident is caused because of the negligence of the vehicle driver. consequent to the injuries suffered in the accident, the horse died.

2. The claim was contested by the appellant-insurer on the ground that the insured pickup van was not having valid permit as on the date of the accident. There was no negligence of vehicle driver. The liability of the insurer is restricted in terms of section 147 of the Motor Vehicles Act. The Tribunal, after considering the evidence on record, concluded that the claimant is entitled for compensation of Rs.50,000/- from respondent nos.1 to 3 jointly and severally alongwith interest @ 7% p.a. from the date of presentation of the petition.

3. Mr. Bodade, learned advocate appearing for the appellant submit that the insured vehicle was not having valid permit on the date of the accident. Therefore, there is breach of conditions of the policy. He would further submit that nothing is placed on record to show that valuation of the horse/livestock was Rs.50,000/- as considered by the Tribunal. Lastly, he submits that liability of the insurer would be limited to Rs.6,000/- in terms of section 147 of the Motor Vehicles Act, which man-

dates for compulsory insurance of "Third Party Property Damage" to the extent of Rs.6,000/- only.

4. Mr. Gandhi, learned advocate appearing for the respondents supports the award and submit that the Tribunal after considering the defenses of the insurance company recorded findings regarding liability, hence there is no case for interference in appeal.

5. Having considered the submissions advanced and on perusal of the record with the assistance of learned advocates appearing for the parties, it is evident that there is no dispute regarding the accident and death of horse/livestock owned by the claimants. Offence was registered against the driver of pickup van vide crime No.I-78 of 2014. In this background lets proceed to deal with contentions of the appellant. The first contention of the appellant that there is breach of conditions of the policy. Perusal of the written statement exhibit-39 shows that general defence is raised by the insurer that at the time of the accident, the insured vehicle was plying without valid permit. However, no efforts are taken to prove such defence. Even the copy of permit alleged to have expired prior to the date of accident is not placed on record. Evidence of the transport authority is not recorded. Therefore, except bare words in the written statement, nothing has been brought on record to bring home defence in terms of section 149 (2) of the Motor Vehicles Act. No substance found in the contentions of the appellant on the point of breach of the policy.

6. The second contention raised on behalf of the appellant is that there is nothing to valuate livestock/horse at the time of the accident. However, such contention is unacceptable. The claimant has produced purchase receipts of the horse. It reveals that Marked Yard Committee, Shahada, District Nandurbar issued same. Value of transaction is shown as Rs.50,000/-. The Tribunal relied upon the same. In absence of

contra evidence, no fault can be found in the findings recorded by the Tribunal regarding assessment of the loss.

7. The third contention raised on behalf of the appellant that the liability of the insurer is restricted to Rs.6,000/- for TPPD in terms of mandate under section 147 of the Motor Vehicles Act. However, perusal of the insurance policy on record placed at exhibit 28 would show that the appellant has issued "Commercial Vehicle Package Policy" in favour of insured. The prescribed Limits for purpose of statutory liability depicts Rs.7,50,000/-for anyone claim. It is trite that the insurer can extend insurance cover beyond statutory limits. In the present case, since the policy is in the nature of "Commercial Vehicle Packaged Policy," extended insurance limit of Rs.7,50,000/- towards statutory limit is provided. It is apparent that statutory limit of Rs.6,000/- has been enhanced by specific contract to Rs.7,50,000/-.

8. Mr. Bodade, learned advocate appearing for the appellant/ insurer contends that, additional premium has not been paid for extension of Third Party Property Damage limits. However, there is nothing to explain the specific extended statutory liability of Rs.7,50,000/- appearing under the caption of limits of liability in respect of accident as per Motor Vehicles Act, 1988. In that view of the matter, the contentions of insurer cannot be accepted. Pertinently, no attempt is made by the appellant-insurer to explain the terms of the policy. Further, pleadings in the written statement is also silent on crucial aspect. There is no basis to accept the contentions regarding limited liability in absence of explanation of larger insurance cover provided in the policy document itself. It is submitted by Mr. Gandhi learned counsel on behalf of claimant/respondent that in case of 'commercial vehicle packaged policy,' third party property damage would be beyond statutory limits and after Rs.7,50,000/-. He submits that in view of *IRDAI circulars* such extended insurance cover is

provided under the policy. In that view of the matter, if the insurance policy itself indicates that limits of the company's liability has been extended by specific stipulation to Rs.7,50,000/- no other inference is possible. Resultantly, there is no merit in the appeal. Hence, the appeal is hereby dismissed. The amount of compensation deposited by the appellant/insurer be disbursed in favour of the claimant alongwith accrued interest. First appeal is accordingly disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

...

aaa/-