IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3124 OF 2011

United India Insurance Co. Ltd.,
Through its Divisional Office,
Divisional Manager,
Osmanpura, Aurangabad. ...Appellant
(Ori. Res. No. 3)

Versus

1) Ejaz S/o. Ishtiyak Pathan
Age 25 yrs. Occu: Before
Accident – Service and Business
At present Nil,
R/o. Sayyad Nagar, Hadapsar,
Pune.
U/g. Of his real father
Ishtiyak S/o. Maqbool Pathan
Age 50 yrs. Occu: Driver
R/o. Sayyed Nagar, Hadapsar,
Pune.

2) Vijaykumar S/o Vishwanath Andhare
Age Major, Occu. Driver
R/o. Gavali Nagar, Latur,
(Driver of Pick up Van No.MH12/AR-7754)

3) Taher S/o. Khaja Bagwan
Age 40 yrs. Occu. Business,
R/o. Nalegaon, Tq. Chakur,
Dist. Latur. (Owner of Pick up Van
No.MH12/AR-7754) ...Respondents
(Resp. No. 1 is org. Claimant)
And R-2 & 3 are orig. Respndts.)

Mr S.V. Kulkarni, Advocate for Appellant
Mr R.P. Adgaonkar, Advocate for Respondent No. 1
...

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 24-02-2023
PRONOUNCED ON : 08-03-2023

JUDGMENT :

1. The present appeal impugns the Judgment and award passed by the Motor Accident Claims Tribunal, Latur in MACP No.184/2004 dated 24-04-2009. The appellant is the original respondent No.3 / insurer of Pickup van Registration No. MH-12/AR-7754. The respondent No.1 is the original claimant / injured. The respondent Nos. 2 and 3 are driver and owner of the Pickup van. The Tribunal passed an award for Rs. 6,80,200/- along with interest @ 7.5% per annum against the owner, driver and insurer of the pickup van.

2. The claimant/injured had approached the Motor Accident Claims Tribunal at Latur claiming compensation of 5,00,000/- under section 166 of the Motor Vehicles Act, 1988 from owner, driver and insurer of Pickup van. The claimant pleads that on 26-04-2003, he loaded tomato crates in the Pickup van. He boarded the vehicle along with his goods for selling in Latur market. During the journey, the driver of the Pickup van lost his control over the vehicle and dashed to bridge wall. The claimant suffered grievous injuries i.e. fracture of left temporal and parietal bone, fracture to clavicle and injuries to the left shoulder, knee joint. The claimant was hospitalised

at Latur where he took his treatment under medical supervision of Dr. Shyam Agroya during the period from 27-04-2003 to 06-05-2003. The claimant took his further medical treatment at J.J. Hospital, Mumbai during the period from 07-05-2003 to 06-06-2003.

3. The claimant had instituted MACP No. 184/2004 before the Tribunal at Latur raising the claim of Rs.5,00,000/- under the Motor Vehicles Act contending that he lost physical and mental capacity on account of injuries suffered in the accident. He contends that he was skilled truck mechanic and also had the business of selling vegetables. However, due to injuries suffered in the accident, he has lost his total earning capacity.

4. The respondent No.2/owner of the vehicle filed the written statement at Exh.22. He admitted that the claimant boarded in the vehicle along with the goods for going to Latur market and vehicle met with an accident during the journey. The appellant/original respondent No.3/insurer of the Pickup van filed written statement raising the defense that the vehicle has been registered and insured as goods carriage. The claimant was travelling as gratuitous passenger. The risk of gratuitous passenger is not covered under statutory scheme or otherwise. Hence, they are not liable to pay the compensation.

5. The claimant relied upon the evidence of CW1 Ishtiyak Pathan / guardian as well as the copy of complaint at Exh. 56, copy of spot panchanama Exh. 58 and the statement of two other occupants of the vehicle and Police Statement. The Tribunal considering the evidence on record passed an award of Rs. 6,80,200/- thereby directing respondent Nos. 1 to 3 to pay compensation of Rs. 6,80,200/- along with interest @ 7.5 % per annum to the claimant.

6. Mr S.V. Kulkarni, learned advocate appearing for the appellant vehemently submitted that the vehicle in question has been insured as goods carriage. The risk of passenger is not covered either under statutory scheme under section 147 of the Motor Vehicles Act or by way of an additional contract. He would submit that the insurer has raised specific defense in his written statement. However, the Tribunal failed to appreciate its case. He would further submit that the claimant has not proved his income or loss of earning capacity. He submits that the evidence of Dr Shyam Agroya at PW2 is not reliable. The disability assessed by him is excessive and exorbitant. The learned advocate Mr S.V. Kulkarni for the appellant has also assailed the assessment of compensation. He relied upon the Judgment of Hon'ble Supreme Court of India in the case of ***New India Assurance Company Vs. Asha Rani and others*** reported in ***AIR 2003 SC 607,*** the ***Oriental Insurance***

Company Ltd Vs. Devireddy Konda Reddy reported in ***AIR 2003 SC 1009*** in support of his contention that the risk of gratuitous passenger travelling in the goods carriage would not fall within scope of statutory insurance cover under section 147 of the Motor Vehicles Act.

7. The learned advocate Mr R.P. Adgaonkar appearing for the respondent No.1/original claimant would submit that the Tribunal has recorded the findings of facts based on the evidence adduced during the trial. He would submit that in view of the amended provisions of section 147 of the Motor Vehicles Act, the owner of goods or his representative travelling in goods carriage is also covered within the scheme for statutory insurance cover. To buttress his contention, he relies upon the Judgment in case of ***Ramesh Kumar Vs. National Insurance Company reported in (2001) 6 SCC 71.***

8. Having considered the submissions advanced by the learned advocates appearing for the respective parties, it is observed that claimant has suffered the injuries arising out of the motor vehicle accident dated 26-04-2003. The Pickup van was insured as goods carriage. The claimant had boarded in the said vehicle for going towards Latur. The accident was reported to the Police Station vide FIR at Exh. 56. The spot panchanama was drawn

vide Exh. 58. The contents of the prompt complaint clearly shows that the claimant and others had loaded the tomato crates in the vehicle that was hired for transportation to Latur market. The spot panachanama depicts that tomato crates loaded in the vehicle were scattered on the road after accident. The claimant has specifically pleaded in the petition that he boarded in the vehicle as owner of the goods i.e tomato crates for selling in the Latur market. The respondent No.2/owner of the vehicle in his written statement admitted that the claimant had hired services of vehicle for carrying goods and he boarded in vehicle in the capacity of owner of the goods. The Tribunal accepted the case of the claimant that he was travelling in the capacity of the owner of the goods in the goods carriage.

9. It is the trite that the goods carriage shall be used primarily for carrying of the goods. It does not contemplate transportation of the passenger. However, legislatures wisdom visualized carriage of persons in the goods carriage either in the capacity of employees or as the caretaker of the goods being transported in the vehicle. The amendment in section 147 of the Motor Vehicles Act, introduced in the year 1994 provides statutory insurance cover even to owner of goods or his authorized representative. The Hon'ble Supreme Court of India in the matter of ***Ramesh Kumar*** (supra) considered the object and purpose of 1994 amendment in section 147 of Motor

Vehicles Act, 1988 and approved that owner of goods or his authorized representative while travelling along with goods in a goods carriage would fall under statutory insurance cover.

10. The general proposition of the law approved in case of ***Asha Rani*** (supra) that gratuitous passenger travelling in goods carriage is not the third party is reiterated in catena of Judgments delivered by the Supreme Court of India as well as this Court. However, in the facts of the present case, since the evidence on record clearly depicts that a claimant was travelling along with goods, the case in hand is covered by law approved in ***Ramesh Kumar*** (supra). In that view of the matter, the case of the insurer cannot be accepted.

11. The claimant suffered 70% permanent disablement. The evidence of PW2 Dr Shyam Agroya is recorded before the Tribunal to prove nature of disability. The Tribunal on appreciation of evidence, accepted 62% permanent disablement suffered by the claimant. This court do not find infirmity in quantum of compensation assessed by tribunal in consonance with oral and documentary evidence. The assessment of compensation to the tune of Rs. 6,80,200/- inclusive of medical expenses of Rs.52,135/- and non-pecuniary damages do not call for interference.

12. In view of the aforesaid observations, there is no merit in appeal.

13. The appeal is dismissed with costs.

14. The claimant is at liberty to withdraw the amount of compensation, if any, deposited by the appellant/Insurance company.

[S.G. CHAPALGAONKAR, J.]

mta