IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1659 OF 2012

1. M/s. National Insurance Company Ltd.,
having its registered and Head Office at 3
Medleton Street, Kolkata – 700 079,
Branch AT Opp. St. Stand Latur,
and Division Office, at Hazari Chambers,
Station Road, Aurangabad 431 005
through its Divisional Manager,
Mr. Ramnarayan s/o. Ramprasad Bang
Age 55 years,

… APPELLANT

VERSUS

1] Rashidmiya S/o. Ismail Saudagar,
Age 45 years, occupation : Nil.

2] Chandabee w/o. Rashidmiya Saudagar
Age 40 years, Occ. Household,
Both R/o. Udgir, Tal. Udgir, Dist. Latur.

3] Basawraj s/o. Subhash Punna,
Age major, Occupationl Plumber
R/o. Togri, Taluka Dist. Latur,
Driver and owner of Hero Honda Motor
Cycle No. MH-12 CW 6820 – Died.

3.a) Subhash s/o. Manikrao Punna,
Age 50 years, Occ. Nil.

3.b) Sow. Lujabai w/o. Subhash Punna
Age 40 years, Occ. Household,

3.c) Gajanan s/o. Subhash Punna
Age 20 years, Occ. Business,
Resp.No. 1(a) to 1(c) r/o. Udgir,
Tq. Udgir, Dist. Latur.

4) Trimbak s/o. Sahebrao Lad,

Age major, Occupation Business,
R/o. Chikhli Tq. Patoda, Dist. Beed.
(Owner of truck No. MWR 3625) … RESPONDENTS.

Mr. V.N. Upadhye, Advocate for the appellant,
Mr. R.S. Shinde – Borolkar, Advocate for respondent Nos. 1 and 2
Mr. T.M. Tandale, Advocate for respondent No.3.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 14th July, 2023
PRONOUNCED ON : 28th July, 2023.

JUDGMENT :-

1. Aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Udgir, Dist. Latur in M.A. NO. 136 of 2007, dated 10.4.2012, the appellant/insurer has approached this Court under Section 173 of the Motor Vehicles Act.

2. The respondents Nos. 1 and 2 herein had approached the Tribunal invoking the provisions of Section 163A of the Motor Vehicles Act, thereby raising the claim for compensation towards the accidental death of their son Maktum Saudagar. The contention of the claimants is that on 2.11.2005, Makum was travelling as a pillion rider on motor cycle No. MH-12/CW-6820. One Basavraj was riding the motorcycle. When it reached in the vicinity of village Palasdev on Pune -Solapur Highway, the motorcycle collided against a parked truck. The rider and pillion rider of the motorcycle sustained fatal injuries in the said accident. According to the claimants, the deceased was their son and they were dependent upon him.

3. According to them, the accident occurred due to the negligence on the part of the driver of the motor cycle as well as the truck driver. Therefore, they raised claim for compensation against the motorcycle owner / driver and its insurer and owner of the truck.

4. The claim was contested by the appellant/insurance company on the ground that the risk of the pillion rider is not covered under the policy. The owner of the truck contested the claim on the ground that a false claim is instituted against him and his vehicle is not involved in the accident. The Tribunal had framed the issues based on the pleadings of the parties. The claimant No.1 relied upon his own evidence and evidence of the witness No.2 i.e. Santosh Parmar, who had witnessed the incident. The claimants relied upon the documentary evidence. The tribunal, after considering the evidence on record allowed the claim petition holding that the respondents are joint and severally liable to pay compensation to the claimants to the tune of Rs. 4,10,550/- alongwith interest @ 9% p.a..

5. Mr. Upadhye, learned counsel appearing for the insurance company in his endeavor to assail the award submits that rider of the insured motor cycle was not holding a valid and effective driving licence, therefore, the insurer of the motor cycle had no liability to pay the compensation. He would further submit that the owner of the vehicle had not paid extra premium to cover personal accident cover to the pillion rider. Therefore, the claim could not have been entertained by the Tribunal.

6. Per contra, Mr. Shinde, learned advocate appearing for respondent Nos. 1 and 2 and Mr. Tandale, learned advocate for respondent Nos. 3A to 3C and 4 submits that the claim is filed under the provisions of Section 163A of the Motor Vehicles Act. The appellant/insurer has issued a package policy in respect of the motorcycle. The risk of the pillion rider would be covered under such insurance contract. It is further submitted that although the insurer is raising the defence that the motor cycle rider was holding a valid and effective driving licence, no evidence in support of such defence is brought on record

7. Having considered the respective submissions and after going through the record and proceeding, it can be gathered that the present claim is filed under the provisions of Section 163A of the Motor Vehicles Act. The pleading and proof of negligence is not germane to such claim. The accident occurred due to collision between motorcycle and the truck in question. Therefore, the claimants have a right to recover compensation from owner or insurer of either or both vehicles.

8. Although Mr. Upadhye learned advocate for the appellant contends that the risk of pillion rider is not covered under the policy, he candidly admits that the vehicle has been insured under package policy. Pertinently, The Supreme Court of India in the matter of **National Insurance vs Balkrishnan and another reported in (2013) 1 SCC 731** has settled the position of law that in case of package policy, the pillion rider of the motor cycle would be covered as if he is a third party. In that view of the matter the defence raised on behalf of the insurer appears to be fallacious.

9. The second contention raised on behalf of the appellant is that the driver of the motor cycle was not holding a valid and effective driving licence do not hold water since the appellant failed to take any steps to bring home such defense. Pertinently, the Owner-Driver of the vehicle lost his life in the same accident. The insurer could not produce any evidence to indicate that the deceased Owner-Driver of the vehicle was not authorized to drive the motor cycle. Merely raising a defense in the written statement regarding breach of the policy would not be sufficient. The insurer in such cases, has to discharge the primary burden of establishing defence, which the appellant has failed to discharge in this case. In that view of the matter, there is no merit in the appeal. Hence, the same is dismissed. The amount deposited by the appellant be disbursed to the claimants. Pending Civil Application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE.

grt/- ...