IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 2813 OF 2021

1. The Branch Manager,
New India Assurance Company Ltd.,
Branch Office, Subhash Road, Beed,
Tq. & Dist. Beed

Through its Divisional Manager / Authorized Signatory,
Mahesh Auto Compound,
Adalat Road, Aurangabad,
Tq. & Dist. Aurangabad **... Appellant**
(Ori. Resp. No.2)

VERSUS

1. Suresh Namdeo Dhaygude,
Age : 49 years, Occu. : Labour,

2. Ashok Suresh Dhaygude,
Age : 25 years, Occu. : Education,

3. Shivaji Suresh Dhaygude,
Age : 23 years, Occu. : Education,

All R/o. : Krishna Naga, Savata Mali Chowk,
Parali – Vaijinath, Tq. Parali – Vaijinath, Dist. Beed

4. Govind Nivrutti Munde,
Age : Major, Occu. : Ape Owner,
R/o. : Tokewadi, Tq. Parali –
Vaijinath, Dist. Beed **... Respondents**
(Resp. Nos.1 to 3 – Ori. Claimants,
Resp. No.4 – Orig. Resp. No.1)

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Mr. A.B. Kadethankar – Advocate for Appellant
Mr. U.G. Mitkari – Advocate for Respondent Nos.1 to 3
Ms. R.V. Sundale – Advocate for Respondent No.4

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CORAM : SANDIPKUMAR C. MORE, J.
RESERVED ON : 20th March, 2023
PRONOUNCED ON : 27th April, 2023

JUDGMENT :

1. The appellant – Insurance Company, who is original respondent No.2 in M.A.C.P. No. 17 of 2017 has challenged the judgment and award dated 8th September, 2021 passed by the District Judge – 2 and Ex-Officio Member of Motor Accident Claims Tribunal, Ambajogai *(hereinafter referred to as **"learned Tribunal"** for short)* in the aforesaid Claim Petition only on the ground that, the learned Tribunal has fixed the liability upon it to pay the compensation to present respondent Nos.1 to 3 – claimants despite there being breach of Policy Conditions.

2. It is not disputed that, the deceased Rukminbai was proceeding in Ape rickshaw bearing No. MH-22-H-4273 from Parli to village Limbota and when it reached at Talegaon Shivar, on Parli – Beed Road it met with an accident which resulted in her death. Further, it appears that the learned Tribunal after conducting trial and considering the rival submissions, found present appellant – Insurance Company and present respondent No.4 i.e. owner of the Ape rickshaw involved in the accident, liable for paying the compensation of Rs.6,70,000/- along-with interest @ 8% p.a. from

the date of filing of petition till its realization under joint and several liability.

3. Learned Counsel for the appellant – Insurance Company submits that, the Insurance Company has filed this appeal only on the ground that, it was not liable for payment of compensation as ordered by the learned Tribunal because the deceased was travelling in private auto rickshaw, which was in-fact registered as private vehicle. He further submits that, the policy under which the auto rickshaw was insured at the time of accident was clearly a Private Car Liability Policy and except third party premium no other premium for covering the risk of owner, driver or the occupants of the same was paid by the respondent No.4. Thus, he contended that the policy of the offending auto rickshaw was only act policy and not the comprehensive one and, therefore, he denied the liability of paying compensation to the respondents – claimants. He specifically pointed out that, though such defence in respect of breach of condition of policy was raised by the appellant – Insurance Company before the learned Tribunal in its written statement and written notes of arguments but surprisingly the learned Tribunal did not touch this aspect and wrongly held that,

the appellant – Insurance Company is also liable to pay the compensation along-with the present respondent No.4, owner under joint and several liability.

4. On the contrary, learned Counsel for respondent No.4, owner-cum-driver though admitted that, the Ape rickshaw involved in the accident was registered as private vehicle but claimed that the appellant – Insurance Company had not raised this aspect before the learned Tribunal.

5. On the other hand, learned Counsel for respondent Nos.1 to 3 – claimants supported the judgment of learned Tribunal and submitted that, the learned Tribunal rightly fixed the liability of paying compensation upon the appellant – Insurance Company. However, in the alternative he submitted that considering the peculiar facts of this case, pay and recover order can also be possible. The learned Counsel for the Insurance Company however, strongly opposed such submission in respect of passing of pay and recover order.

6. With the able assistance of learned Counsel for the respective parties, I have gone through the impugned judgment and entire

record and proceedings of the aforesaid Claim Petition along-with the oral and documentary evidence.

7. It is significant to note that, the appellant – Insurance Company has not denied the quantum of compensation determined by the learned Tribunal but it has only challenged the finding of learned Tribunal whereby the appellant – Insurance Company is held liable for paying the compensation, despite there being breach of Policy Conditions. It is to be noted that the appellant – Insurance Company had raised defence for exonerating itself in the written statement as well as written notes of arguments in view of the breach of Policy Conditions. Further, it is evident that the deceased was travelling in the private vehicle as a passenger at the time of accident and copy of policy produced by the learned Counsel for the appellant – Insurance Company under direction of this Court clearly indicates that, it was Private Car Liability Policy wherein except third party premium no other premium for covering the risk of driver, owner and unnamed persons or the paid driver, was paid.

8. However, on going through the entire judgment it appears that, the learned Tribunal has not discussed anything on this

aspect of exonerating the Insurance Company on account of breach of Policy Conditions. The judgment itself indicates that, though the learned Tribunal recorded contents of written statement and the grounds of challenge raised by the appellant – Insurance Company but nothing is discussed in respect of the same. On the contrary, for holding the appellant – Insurance Company liable for paying the compensation, the learned Tribunal only made following observations in paragraph No.19 of the judgment in cryptic way as under :

> *"19. Further the petitioners proved and brought on record that on the day of accident insurance policy of the offending vehicle was in existence, so the respondent Nos.1 and 2 are jointly and severally liable to pay the compensation on account of death of deceased Rukminbai due to road accident dated 26.10.2016. So I answer issue Nos.1 and 2 in affirmative accordingly."*

9. Thus, it appears that the learned Tribunal has not touch this aspect as to whether the appellant – Insurance Company is liable for payment of compensation or it can be exonerated in the light of nature of policy of the offending auto rickshaw. Therefore, without expressing any opinion on merit, this Court intends to remand the matter back to the learned Tribunal for deciding it afresh in respect of liability of Insurance Company in the light of Policy

Conditions and nature of policy of the offending auto rickshaw. In view of the same, following order is passed :

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgment and award dated 8th September, 2021 passed by the learned District Judge – 2 and Ex-Officio Member, Motor Accident Claims Tribunal, Ambajogai in M.A.C.P. No. 17 of 2017 is hereby set aside and the matter is remanded back to the concerned Motor Accident Claims Tribunal for deciding it afresh, specially, in respect of liability of Insurance Company for paying the compensation to the claimants in the light of Policy Conditions and the nature of policy of the offending auto rickshaw.

(iii) The appellant – Insurance Company shall produce fresh certified copy of policy which is already at Exhibit – 20 before the learned Tribunal and all the parties are at liberty to adduce additional evidence in respect of the same.

(iv) The parties are directed to appear before the concerned Motor Accident Claims Tribunal, Ambajogai on or before 15th June, 2023 and the concerned Motor Accident Claims Tribunal, Ambajogai is directed to decide the Claim Petition No.17 of 2017 expeditiously and as far as possible within one year from the date of this order.

(v) The record and proceedings be sent back to the concerned Motor Accident Claims Tribunal, Ambajogai forthwith.

(vi) The appellant – Insurance Company is permitted to withdraw the amount of compensation, which is deposited by it in this Court along-with accrued interest thereon till date.

(vii) It is made clear that, no finding on merits of this case is recorded by this Court in this order.

(viii) Pending Civil Applications, if any, also stand disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

Pooja Kale