Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.862 OF 2018

Vishnu Shankar Raut]
Aged about 86 years,]
R/o Plot No.10, Building No.5,]
Ganesh Baug, Sinhgad Road,]
Manik Baug, Pune - 411 051.] Appellant

Vs.

1. Alka Sunil Kandhare]
   Aged about 32 years]

2. Master Kunal Sunil Kandhare]
   Aged about 10 years]

3. Master Karan Sunil Kandhare]
   Aged about 8 years.]

4. Miss Devyani Sunil Kandhare]
   Aged about 3 years]
   R/o survey No.111, Sutar Dara,]
   Wadeshwar Nagar, Near]
   Krantisena Kaman]
   Kothrud, Pune - 411 038.]

5. Eknath @ Kacharu Fagadoo]
   Kandhare]
   Adult aged

6. Smt. Gahubai Eknath Kandhare]
   Aged about 53 years,]
   Both are residing at Post]
   Andoshi, Taluka Mulshai, Dist]
   Pune.

7. The New India Assurance]
   Co. Ltd., 87, M.G. Road,]
   Fort, Mumbai - 400 001.] Respondents

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Mr. T.J. Mendon, for Appellant.

Mr. C.T. Chandratre i/b Mr. S.C. Chandratre, for Respondents No.1, 5 and 6.

Ms. Poonam Mittal, for Respondent No.7.

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 25th APRIL, 2023.

PRONOUNCED ON : 4th MAY, 2023.

ORDER:

1. This is an appeal by the owner of the offending vehicle challenging the judgment and order dated 12th February, 2018 passed by Commissioner for Employee's Compensation & Judge, Labour Court, Pune in E.C. Application No.41/B-8 of 2015 wherein though the trial Court awarded compensation of Rs.7,68,534/- to be paid to the original applicants along with simple interest @ 12% per annum from the date of accident till it's realization, however, the Court has discharged the insurer - respondent No.7 exonerating it from paying compensation along with original opponent No.1-employer.

2. This Court by an order dated 25th September, 2019 admitted the appeal on the following question of law;

> "Whether in terms of section 147 of the Motor Vehicles Act, the person engaged in driving the vehicle is statutorily covered and no additional premium is required to be paid?

3. I heard Mr. Mendon, learned Counsel for the appellant as well as Mr. Chandratre, learned Counsel for respondents No.1, 5 and 6 and Ms. Mittal, learned Counsel for respondent No.7-insurer.

4. The appellant is the owner of Auto Rickshaw bearing registration No.12-AQ-130 which was being driven by the deceased Sunil Kacharu Kandhare on the fateful day of 23rd November, 2014 when the accident took place at Pune Andoshi road wherein he succumbed to serious injuries.

5. The only question which needs to be determined is as to whether in view of section 147 (2) of the Motor Vehicles Act, 1988, the insurer can also be held liable and will be directed to indemnify the appellant/owner while awarding compensation.

6. Proviso to section 147 (1) (i) reads thus;

> **147. Requirements of policies and limits of liability._**
> (1)......
> (a).....
> (b).....
> (i).....
> (ii)....
> "**PROVIDED** that a policy shall not be required-
> (i)to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923 (8 of 1923), in respect of the death of, or bodily injury to, any such employee-
>
> (a) engaged in driving the vehicle, or
>
> (b) if it is a public service vehicle, engaged as a conductor of the vehicle or in examining tickets on the vehicle, or
>
> (c) if it is a goods carriage, being carried in the vehicle, or to cover any contractual liability".

7. Mr. Mendon has placed reliance on a judgment of the Hon'ble Supreme Court in case of **National Insurance Co. Ltd Vs. Prembai Patel and others, 2005 ACJ 1323**. Paragraph 12 of the said

judgment is extracted below;

> "12. The heading of Chapter XI of the Act is - Insurance Of Motor Vehicles Against Third Party Risks and it contains Section 145 to 164. Section 146 (1) of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of Chapter XI. Clause (b) of sub-section (1) of Section 147 provides that a policy of insurance must be a policy which insures the person or classes of persons specified in the policy to the extent specified in sub-section (2) against liability which may be incurred by him in respect of death of or bodily injury to any person or passenger or damage to any property of a third party caused by or arising out of the use of the vehicle in public place. Sub-clauses (i) and (ii) of clause (b) are comprehensive in the sense that they cover both 'any person' or 'passenger'. An employee of owner of the vehicle like a driver or a conductor may also come within the purview of the words 'any person' occurring in sub-clause (i). However, the proviso (i) to clause (b) of sub-Section (1) of Section 147 says that a policy shall not be required to cover liability in respect of death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the *Workmen's Compensation Act* if the employee is such as

described in sub-clauses (a) or (b) or (c). The effect of this proviso is that if an insurance policy covers the liability under the *Workmen's Compensation Act* in respect of death of or bodily injury to any such employee as is described in sub-clauses (a) or (b) or (c) of proviso (i) to Section 147 (1) (b) it will be a valid policy and would comply with the requirements of Chapter XI of the Act. Section 149 of the Act imposes a duty upon the insurer (insurance company) to satisfy judgments and awards against persons insured in respect of third party risks. The expression "such liability as is required to be covered by a policy under clause (b) of sub-section (1) of Section 147 (being a liability covered by the terms of the policy)" occurring in sub- section (1) of Section 149 is important. It clearly shows that any such liability, which is mandatorily required to be covered by a policy under clause (b) of Section 147 (1), has to be satisfied by the insurance company. The effect of this provision is that an insurance policy, which covers only the liability arising under the *Workmen's Compensation Act* in respect of death of or bodily injury to any such employee as described in sub-clauses (a) or (b) or (c) to proviso (i) to section 147 (b) of the Act is perfectly valid and permissible under the Act. Therefore, where any such policy has been taken by the owner of the vehicle, the liability of the insurance company will be confined to that arising under the *Workmen's Compensation Act".*

8. The learned Judge, in the impugned judgment, erroneously observed that the insurance policy **"Exhibit U-13"** only covered

third party insurance. The premium for driver or employee is not paid and, therefore, auto rickshaw driver is not covered under the said policy. As a matter of fact, column "Schedule of Premium" of insurance policy **"Exhibit U-13**" reads thus;

> " **Liability**
>
> Basic TP Cover
>
> CNG/LPG, Legal liability to passengers,
> LL to paid driver, conductor, cleaner employed for opm"

It is not only an act policy as stated hereinabove in view of section 147 (2) of the Motor Vehicles Act, 1988 and the judgment of the Hon'ble Supreme Court, but it clearly indicates that the policy covered the liability in respect of driver, conductor, cleaner employed for opm.

9. Admittedly, the deceased Sunil Kacharu Kandhare was the employee of the appellant who met with an accident while driving an Auto Rickshaw bearing registration No.MH-12-AQ-130 owned by the appellant and insured by the insurer-respondent No.7. The insurer-respondent No.7, therefore, cannot disown it's liability to indemnify the appellant as a owner while awarding compensation to

the legal representatives of the deceased. The impugned judgment, therefore, required to be modified to that extent.

10. Ms. Mital, learned Counsel for the respondent No.7-insurer, after going through the policy schedule and certificate at **"Exhibit U-13",** is fair enough to admit that the legal liability covers driver, conductor, cleaner employed by OPM.

11. In view of the above, following order is passed:

O R D E R :

[a] Appeal is allowed;

]b] The Judgment and decree dated 12th February, 2018 passed by the Commissioner for Employee's Compensation & Judge, Labour Court, Pune in E.C. Application No.41/B-8 of 2015 is modified to the extent of making both the appellant and respondent No.7-insurer jointly and severally liable to deposit amount of compensation along with interest as awarded by the Commissioner for Employee's Compensation & Judge, Labour Court, Pune.

12. The appeal stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]