

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.113 OF 2000**

|                                 |   |                     |
|---------------------------------|---|---------------------|
| United India Insurance Co. Ltd. | } |                     |
| Divisional Office No.8,         | } |                     |
| Union Co. Op. Bldg., P.M. Road, | } |                     |
| Mumbai-400001                   | } | <b>...Appellant</b> |

*Versus*

|                                     |   |                       |
|-------------------------------------|---|-----------------------|
| 1. B. Vithal Shetty                 | } |                       |
| 2. Rajeev Vithal Shetty             | } |                       |
| 3. Veena Vithal Shetty              | } |                       |
|                                     | } |                       |
| All R/at 9, Mamta Co. Op. Hsg. So., | } |                       |
| Rifle Range, Ghatkopar (W),         | } |                       |
| Mumbai-86                           | } |                       |
| 4. Vijay B. Ghosalkar               | } |                       |
| 74-A-6, Swami Samartha Nagar,       | } |                       |
| Girgaum, Mumbai-400 004.            | } | <b>...Respondents</b> |

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Ms.Poonam Mital, for the Appellant.  
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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 4 MAY 2023**

**JUDGMENT :**

1. The issue involved in this Appeal is limited liability of the Appellant-Insurance Company.

2. It is contention of the learned counsel for the

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Appellant that the Appellant had issued Insurance Policy to the offending vehicle, but liability was limited of Rs.50,000/-, but Tribunal has awarded more amount. Hence, requested to allow the Appeal.

3. The appeal is of the year 2000, in spite of service of notice, none present for the Respondents. Hence, I am deciding this matter on merit.

4. I have heard learned counsel for the Appellant. Perused judgment and order passed by the MACT, Mumbai (for short 'the Tribunal').

5. While dealing with the issue of limited liability of the Appellant the Tribunal has observed that the Appellant has not produced the original copy of Insurance Policy to show that there was Insurance Policy for limited amount.

6. The Appellant examined defense witness in support of their defense. The defense witness in cross-examination at Exhibit-32 admitted that the Policy issued by us at Exhibit-32 is a new policy and now I say that it is renewed policy. He further admitted in his evidence that there are two parts in the policy. The First part covers the own damages to the insured and second part covers the legal liability of the insured party towards the

public. He further admitted that we recovered from the opposite party Rs.242/- towards liability towards public risk i.e. third party including passengers and we have received Rs.943/- for 41 passengers @ Rs.23 per passengers. The sitting capacity of the vehicle in question was 42 + 1, driver and one cleaner.

7. It is pertinent to note that this witness has also admitted in his evidence that they have covered the liability at Rs.20,000/- per passenger and there is no minimum liability towards the passenger. He has also admitted that the insurer has recovered Rs.16/- which covers the legal liability under the Workmen compensation Act for the driver and cleaner.

8. Considering the evidence of this witness the Tribunal comes to conclusion that the Appellant-Insurance Company is liable to pay compensation and on that basis order is passed. I do not find any infirmity in it. Appellant did not prove before the Tribunal that the policy issued in respect of offending vehicle was for limited amount.

9. In view of above, I pass following order.

### **ORDER**

(i) Appeal is dismissed. No order as to costs.

(ii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount is transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

**(SHIVKUMAR DIGE, J.)**