IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

FIRST APPEAL NO.225 OF 2008
AND
FIRST APPEAL NO.852 OF 2009

FIRST APPEAL NO.225 OF 2008

1. The New India Insurance Company Ltd.
Bharat Kala Road,
Dr. Rathi Building, Malkapur,
District Buldhana

2. The New India Assurance Co. Ltd.
Branch at Sangali, through the Manager,
Regional Office at Seminary Hills,
Nagpur

...APPELLANTS

VERSUS

1. Narayan Ganpat Ghatte,
Aged 40 years,
Occupation – Service in Tahsil office,
Malkapur, R/o. Malkapur,
Tq. Malkapur, District Buldhana

2(a). Smt. Ushadevi wd/o Vasantrao Chavan
(widow of the deceased)
Aged 54 years, Occupation – Household,

2(b). Vijay s/o Vasantrao Chavan
(Son of the deceased)
Aged 30 years,
Occupation – Transport Operator,
Shree Vijay Transport

3. Milind Mahadeo Dawale,
Aged – Major, Owner of Tata Sumo,
R/o. Sindhi Camp, Malkapur,
Tq. Malkapur, District Buldhana

...RESPONDENTS

Shri Sandeep Marathe, Advocate for the appellant.
Mrs. S.P. Deshpande, Advocate for R. No.3.

AND

FIRST APPEAL NO.852 OF 2009

Milind Mahadeo Dawale,
Aged – Major, Owner of TATA Sumo,
R/o. Sindhi Camp, Malkapur,
Tq. Malkapur, District Buldhana

...APPELLANT

VERSUS

1. Narayan Ganpat Ghatte,
Aged 46 years,
Occupation – Service in Tahsil office,
Malkapur, Tq. Malkapur,
District Buldhana

2. Vasantrao Dattajirao Chavan
Aged Major, Owner of Truck,
R/o. Deshing, Tq. Kawathe Mahakal,
District Sangli

Appeal is struck off against R. No.2 vide Court's order dated 29/04/2015

3. The New India Assurance Co. Ltd.
Bharat Kala Road,
Dr. Rathi Building,
District Buldhana

4. The New India Assurance Co. Ltd.
Branch at Sangali

...RESPONDENTS

Mrs. S.P. Deshpande, Advocate for the appellant.
Shri B.P. Bhatt, Advocate for respondent Nos.3 and 4.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : APRIL 10, 2023.
PRONOUNCED ON : JUNE 05, 2023

ORAL JUDGMENT :

Heard learned Counsel for the parties.

2. By these appeals, the appellant - Insurance Company and owner Milind Mahadeo Dhawale challenges the judgment and award dated 06/10/2007 passed by the Motor Accident Claims Tribunal, Buldhana in Claim Petition No.29/2002 whereby the Tribunal has awarded the compensation of Rs.1,88,000/- with interest @ 7.5% per annum from the date of filing of the petition till realization of whole amount to the petitioners. The Tribunal directed the appellant – Insurance Company to indemnify opponent No.2 to the extent of Rs.1,00,000/- and opponent No.2 was directed to pay rest of the amount.

3. Brief facts in nutshell are as follows :

A] On 17/12/1997, the claimant was travelling in a TATA Sumo bearing No.MH-10-C-2991 towards Nipani. The said TATA Sumo was driven by its driver in a rash and negligent manner. When they reached near Kanodji Check post on the way of Nipani one truck bearing No.MWE/1450 was proceeding ahead. The TATA Sumo driver while overtaking the truck collided with the truck and the claimant sustained injuries on his head as well as he sustained the fracture of his right hand, left leg, left knee and hip joint. After the accident, he was admitted in Rural Hospital, Nipani and thereafter shifted to Khamgaon. He was admitted in the Hospital at Akola for four months. During his treatment he undergone surgery for left knee. The implants were inserted in his left thigh and nailing was also done. Thus, the accidental injuries resulted into permanent disablement.

4. At the time of accident, claimant was serving as a Clerk in Tahsil office, Malkapur and drawing salary of Rs.5000/- per month. Due to the accidental injuries his working capacity is affected and now he is not able to work as previously working hence, he claimed compensation.

5. In response to the notice, respondent No.1 - Milind Mahadeo Dawale, owner of TATA Sumo resisted the claim on the ground that the accident took place due to the rash and negligent driving of the truck driver. The Insurance Company also resisted the claim on the ground that the vehicle was insured and the risk of 9 *bonafide* passengers was covered to the extent of Rs.1,00,000/-. Hence, Insurance Company is not liable to pay compensation.

6. The claimant adduced his evidence to substantiate the contention vide Exhibit 29. He reiterated the contentions as per his pleading. The sum and substance of his evidence is that alleged accident took place due to the rash and negligent driving of the TATA Sumo driver which is owned by respondent No.1 and validly insured with respondent No.2 – Insurance Company. His evidence was tested on the touchstone of cross-examination. However, nothing incriminating is came on record to show that the Sumo driver was not responsible for the said accident.

7. Besides his oral evidence, he placed on record Medical Bills (Exhibit 30) collectively, Disability Certificate (Exhibit 31), Report (Exhibit 33), Spot Panchnama (Exhibit 34), Insurance Policy (Exhibit 49). No evidence is adduced by the respondents.

8. After appreciation of the evidence, the Tribunal awarded the compensation of Rs.1,88,000/- and directed the Insurance Company to indemnify the owner to the extent of Rs.1,00,000/- in view of the policy Exhibit 49 which covers limited liability of 9+1 persons. The Tribunal further directed opponent No.2 – owner to pay the rest of the amount along with interest @ 7.5% per annum.

9. The Insurance Company as well as the Owner both have challenged the findings of the Tribunal by preferring these appeals. As per the grounds raised by the Insurance Company that the policy issued to opponent No.2 is act only policy and risk of the passengers was not covered under the said policy as the vehicle was used for hire and reward, therefore, the directions of the Tribunal is erroneous and liable to be set aside.

10. The owner has challenged the findings of the trial Court on the ground that the risk of 9+1 persons was already covered under the policy, and therefore, the Insurance Company is liable to indemnify him. Therefore, the directions of the Tribunal directing to pay rest of the amount to the claimant is erroneous and liable to be set aside.

11. Admittedly, in both the appeals only issue raised is whether the Insurance Company is liable to indemnify the owner in view of the terms and conditions of the policy.

12. The rash and negligent driving of the Sumo driver is also challenged by the owner in his appeal. Admittedly, owner has not adduced any evidence by examining the driver of the vehicle to prove that the accident has not taken place due to rash and negligent driving

of the Sumo driver. The evidence of the claimant who is the witness of the said accident also shows that it was the Sumo driver who has not taken due care while driving the vehicle and alleged accident took place. Admittedly, opponent Nos.1 and 2 – Owner and Driver have not challenged the evidence of the claimant by cross-examining him. The claimant is not cross-examined by the Insurance Company on the rash and negligent act. The contention of the claimant further supported by the police papers i.e. Report filed regarding the said accident. The crime was registered against the Sumo driver. The spot panchnama also shows that while overtaking the truck he dashed against the truck and the said accident took place. Thus, the evidence sufficiently shows that Sumo driver was negligent while driving his vehicle.

13. Now only issue which is to be addressed is whether opponent – Insurance Company is liable to indemnify the owner to the extent of limited liability of Rs.1,00,000/- or it has to pay the entire amount of compensation.

14. The entire issue is to be addressed in the light of the contract between the Insurance Company and the Owner. In view of Section 147(1)(b)(i) and 147(2) of the Motor Vehicles Act, 1988 it is pleaded by the owner that insurer is bound to bear entire liability. Be relied upon

the provision and submitted that the words “any person” in Section 147(1)(b)(i) and “the amount of liability incurred” occurring in sub section 2(a), the liability of any person is covered under the said policy. It is well settled that the liability towards the third party is unlimited and the insurance company has to indemnify the owner as far as risk of third party is concerned. The act only policy under Section 147 of the Act did not cover the risk of gratuitous passenger. The terms and conditions of the policy shows that P.A. benefit as per 9+1 persons Rs.1,00,000/- each. Thus, Exhibit 49 clearly shows that for covering the risk of the occupants the insurance company has accepted the premium of Rs.500/- and 9+1 person travelling in the said vehicle is covered under the said policy. Though the Insurance Company raised the defence that the said vehicle was given on hire or reward, the insurance company has not adduced any evidence to prove the same. The cross-examination of the claimant shows that they were travelling in the vehicle as owner was acquainted with one of the occupant travelling in the village. Thus, there is no evidence on record that the vehicle was given on hire and reward in contravention of the policy. So far as the policy conditions are concerned, it specifically states that P.A. benefit covered for 9+1 person to the extent of limited liability. In view of the terms and conditions of the policy the Tribunal held Insurance Company liable to pay compensation of Rs.1,00,000/- as Insurance Company has accepted the limited liability by accepting the additional premium. Thus, the directions given by the tribunal is in view of the policy conditions and no error is committed by the Tribunal holding Insurance Company liable to pay compensation to the extent of Rs.1,00,000/-. The contention of the owner that the vehicle was validly insured hence, the Insurance Company is liable, is also not sustainable in the light of the terms and conditions of the policy. Thus, both the appeals are devoid of merits and liable to be dismissed.

15. Therefore, both the appeals are dismissed with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

**Divya*