2024:BHC-AUG:26078

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.84 OF 1993

Sardar Gyansingh s/o Awatarsingh Bhatia,
Age : 55 years, Occu.: Business,
R/o.: Washim, District : Akola ... **APPELLANT**
(Original Plaintiff)

VERSUS

National Insurance Co. Ltd.,
through Divisional Manager,
Firdos Chambers, Jawaharlal
Nehru Marg Wardha Road, Nagpur ... **RESPONDENT**
(Original Defendant)

....

Mr. Yoshodeep Deshmukh h/f Mr. Anand D. Kaware Advocate for the Appellant
Mr. D. V. Soman, Advocate for the Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 09/08/2024.
PRONOUNCED ON : 23/10/2024

JUDGMENT :

1. The present appellant i.e. the original plaintiff in Special Civil Suit No.99 of 1983 has preferred this second appeal being dissatisfied with the judgment and decree dated 29/08/1992 passed by the learned first appellate court i.e. 3rd Additional District Judge, Nanded in Regular Civil Appeal No.34 of 1987. Under the aforesaid judgment, the learned first appellate court has

set aside the judgment and decree dated 14/10/1986 passed by the learned trial court i.e. Civil Judge (Senior Division), Nanded in Special Civil Suit No.99 of 1983.

2. Background facts are as under :

The appellant / plaintiff has filed Special Civil Suit No.99 of 1983 for recovery of compensation amount of Rs.40,000/- from the respondent / defendant – insurance company. According to the appellant / plaintiff, he owns truck No.MHB-8110, which was insured with the respondent / defendant – insurance company under policy Exhibit-28, which was valid for the period from 06/06/1980 to 05/06/1981. Unfortunately, on 29/11/1980 the said truck met with an accident and received substantial damage. Further, it is contended that on receiving the information supplied by the appellant / plaintiff to the insurance company, the officer of the insurance company visited the spot and estimated damage to the said truck to the tune of Rs.40,000/-. However, the documents in respect of such procedure were withheld by the insurance company. Then in Washim, the superior officer of the insurance company Shri Godbole finalized the claim to the tune of Rs.36,000/-. However, thereafter, the respondent / defendant – insurance company did not pay the said amount. The appellant /

plaintiff was constrained to issue notice Exhibit-26 for calling upon the insurance company to pay the amount of compensation. Since the respondent / defendant – insurance company denied the claim made under the aforesaid notice vide its reply Exhibit-17, the aforesaid suit was filed.

The respondent / defendant – insurance company vide its written statement Exhibit-17 denied the claim of the appellant / plaintiff being barred by the limitation and for want of proper jurisdiction. They claimed that since the truck was carrying passengers despite it being a goods vehicle, they were not liable for paying compensation as the truck was being driven in violation of conditions of the policy. The learned trial court after conducting the trial, allowed the suit of the plaintiff. However, the learned first appellate court reversed the same and dismissed the suit of the appellant / plaintiff in toto. Hence, this second appeal.

3. The learned counsel for the appellant / plaintiff submits that the learned first appellate court has definitely erred in dismissing the suit of the appellant / plaintiff. According to him, the terms and conditions of the policy, were not breached fundamentally since the claim of the appellant / plaintiff was in respect of damage to the vehicle and not in respect of claiming compensation in

respect of death of the passengers. According to him, there was no fundamental breach since the respondent / defendant – insurance company could not establish the fact that mere presence of passengers in the said goods vehicle had any connection to the occurrence of accident. He relied on following judgments:

A) B. V. Nagaraju vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan, reported in (1996) 4 SCC 647;

B) National Insurance Company Limited vs. Savitri Devi and others, reported in (2013) 11 SCC 554;

C) Order dated 30/09/2021 in Civil Appeal No.10329 of 2010 (Shri Annappa vs. New India Assurance Co. Ltd., & another), passed by the Hon'ble Apex Court &

D) Civil Appeal No. 4758 of 2023 arising out of SLP (Civil) No.25256 of 2018 (Ashok Kumar vs. New India Assurance Co. Ltd.), delivered by the Hon'ble Apex Court on 31/07/2023.

4. On the contrary, the learned counsel for the respondent / defendant – insurance company strongly denied the submissions made on behalf of the appellant / plaintiff. According to him, the insurance policy was basically for goods carriage vehicle and the passengers were not supposed to be carried in the same. He pointed out that accident claim filed by the legal representative of

one of the deceased passengers, has already been dismissed by the concerned MACT by observing that there was breach of policy conditions. He also relied on following judgments.

A) Shivram Chandra Jagarnath Cold Storage and another vs. New India Assurance Company Limited and others, reported in (2022) 4 SCC 539;

B) Oriental Insurance Co. Ltd., vs. Sony Cheriyan, reported in (1999) 6 SCC 451 and

C) Chameli Devi Shivanshankar al Vaishya vs. New India Insurance Co. Ltd., Kanpur, reported in 1982 M. P. L. J., 557.

5. Heard rival submissions. Also perused the original record and proceedings in the light of judgments cited by rival parties.

6. It is significant to note that the learned trial court has allowed the suit by observing mainly that there were passengers in the goods vehicle, but their presence was not connected to the occurrence of the accident and therefore, there was no fundamental breach. As against this, the learned appellate court appears to have reversed the finding of the learned trial court by observing that the truck in dispute was being plied contrary to the conditions of insurance policy i.e. by carrying passengers in goods

vehicle and therefore, there was fundamental breach of the policy. Therefore, considering the contentions raised by the rival parties against each other and the observations of both the learned courts below, the only substantial question of law appears to be involved in this appeal is, "**Whether carrying of excess passengers in vehicle beyond RTO permit amounts to a fundamental breach of insurance policy conditions specially when the claim is for damages caused to the vehicle?"** This court under order dated 20/07/2023 has expressed that in the present dispute it is to be seen that whether the claim of damage to the vehicle can be repudiated if the violation has no connection with the accident.

7. Here in this case it is not disputed that the truck had met with an accident and at the time of the accident, it was insured with the respondent / defendant – insurance company. The learned counsel for the appellant / plaintiff heavily relied on the judgment of the Hon'ble Apex Court in the case of ***B. V. Nagaraju vs. Oriental Insurance Co. Ltd., Divisional Officer, Hassan*** *(supra)*, wherein it is observed as follows :

> *"It is plain from the terms of the Insurance Policy that the insured vehicle was entitled to carry 6 workmen, excluding the driver. If those 6 workmen when travelling in the vehicle, are assumed not to*

> *have increased any risk from the point of view of the Insurance Company on occurring of an accident, how could those added persons be said to have contributed to the causing of it is the poser, keeping apart the loan it was carrying. In the present case the driver of the vehicle was not responsible for the accident. Merely by lifting a person or two, or even three, by the driver or the cleaner of the vehicle, without the knowledge of the owner, cannot be said to be such a fundamental brach that the owner should, in all events, be denied indemnification. The misuse of the vehicle was somewhat irregular though, but not so fundamental in nature so as to put an end to the contract, unless some factors existed which, by themselves, had gone to contribute the causing of the accident.*
>
> *The exclusion term of the insurance policy must be read down so as to serve the main purpose of the policy that is to indemnify the damage caused to the vehicle."*

8. On the contrary, the learned counsel for the respondent / insurance company, has relied on observation of the Hon'ble Apex Court in the case of ***Shivram Chandra Jagarnath Cold Storage and another vs. New India Assurance Company Limited and others*** (supra), wherein it is observed as follows :

"Since the insurer undertakes to compensate the loss suffered by the insured on account of risks covered by the insurance policy, the terms of the agreement have to be strictly construed to determine the extent of liability of the insurer. The insured cannot claim anything more than what is covered by the insurance policy."

9. Admittedly, under the terms and conditions of the insurance policy at Exhibit-28 the passengers were not allowed in the said truck, which was registered as a goods vehicle. Therefore, there was admittedly breach of condition when it met with an accident as there were 21 passengers being carried out. However, whether the said breach was fundamental breach related to purpose or object of the insurance policy, is to be seen under the substantial question of law so framed. Admittedly, it is held by the Madhya Pradesh High Court in the case of ***Chameli Devi Shivanshankar al Vaishya vs. New India Insurance Co. Ltd., Kanpur*** (supra) that if truck insured is a goods vehicle carrying living persons in breach of terms of insurance contract, insurance company is not liable to pay damages caused to truck even though passengers were not carried for hire or reward. However, this view is definitely set aside by the Hon'ble Apex Court in the case of ***B. V. Nagaraju*** (*supra*). Further, the observation of the Hon'ble Apex Court in the case of ***Shivram Chandra Jagarnath Cold Storage and another*** (*supra*) is also in

respect of different fact. In the said case the claim was in respect of live stock, which was being carried in the truck which met with an accident and the nature of contract of insurance was in respect of the live stock and not in respect of any damage to the vehicle. Therefore, the observation of the Hon'ble Apex Court in that judgment cannot be made applicable to the present case which is covered by the observation of the Hon'ble Apex Court in the case of ***B. V. Nagaraju*** (*supra*). On going through the judgment of the Hon'ble Apex Court in the case of ***B. V. Nagaraju*** (*supra*) it is clearly evident that the vehicle involved in that case was admittedly a goods vehicle and carrying out humans more than the number permitted in insurance policy. However, discussing the liability of insurer, it has been held that the said carriage of humans more than the capacity was not fundamental breach so as to afford ground to the insurer to deny indemnification unless there were some factors which contributed to the causing of accident and therefore, exclusion of terms of insurance policy must be read down to serve main purpose of the policy.

10. In the instant matter, it is significant to note that the learned first appellate court has relied heavily on the brach of conditions of insurance policy for denying the compensation. However, the

learned first appellate court has not commented upon the purpose of insurance policy. Admittedly, under the policy at Exhibit-28 respondent / defendant – insurance company had undertaken to cover the risk of damage to the vehicle in case of an accident. The learned first appellate court appears to have heavily relied upon the judgment of Motor Accident Claim No.12 of 1981 filed by the legal representatives of one of deceased passengers, which was dismissed on the ground of breach of condition. However, the said claim was in respect of compensation regarding death of the passenger and not for the damage of vehicle. Therefore, by relying upon that judgment, act of the learned first appellate court dismissing the claim of the appellant / plaintiff in respect of compensation regarding damage to the vehicle, is absolutely erroneous. Moreover, as per the observation of the Hon'ble Apex Court in the case of ***B. V. Nagaraju*** (*supra*) carrying persons in goods vehicle more than the number permitted under the insurance policy, cannot be treated as fundamental breach and therefore, insurance company is liable to pay compensation in respect of damage to the vehicle. Therefore, considering this particular aspect the substantial question of law as formulated has to be answered in the negative. Thus, the impugned judgment passed by the learned first appellate court has to be set aside by restoring the judgment passed by the learned trial court. Thus, the second appeal is hereby allowed and the judgment dated 29/08/1992 in Regular Civil Appeal No.34 of 1987 passed by the learned first appellate court is hereby set aside and the judgment and decree dated 14/10/1986 in Special Civil Suit No.99 of 1983 passed by the learned trial court is confirmed. The second appeal is disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-