IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.2739 OF 2016
WITH
CIVIL APPLICATION NO.8580 OF 2011

Oriental Insurance Co. Ltd.,
Through Its Sr. Divisional Manager,
Adalat road, Aurangabad. ..Appellant
(Orig. Respondent No.2.)

Versus

1. Ambrushi Maruti Kadam
Aged: Major, Occ: Agri,
R/o: At post: Diksal,
Tq: Kallam, Dist: Osmanabad

2. Vimal Ambrushi Kadam
Aged: Major, Occ: Agri,
R/o: At post: Diksal,
Tq: Kallam, Dist: Osmanabad

3. Anil Wamanrao Ingale
Aged: Major, Occ: Agri,
R/o: At post: Diksal,
Tq: Kallam, Dist: Osmanabad ..Respondents
(Respondent No.1 & 2 are Orig. Claimants and Resp. No.3 is Orig. resp. No.11)

...

Mr. R. F. Totala, Advocate for the Appellants (Through V.C.)
Mr. S. A. Wakure, Advocate for Respondent Nos.1 and 2.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th APRIL, 2024.

JUDGMENT:-

1. The appellant/Orig. respondent no.2-Insurer has filed this Appeal under Section 173 of the Motor Vehicle Act impugning judgment and award dated 14.12.2010 passed by the Motor Accident Claim Tribunal, Osmanabad in M.A.C.P. No.291/2008.

2. With the consent of the parties, matter is taken up for final hearing.

3. Mr. Totala, learned Advocate appearing for the appellant submits that respondent nos.1 and 2 (original claimants) had filed claim under Section 163-A of the Motor Vehicle Act seeking compensation towards death of their son in motor vehicle accident dated 09.03.2007. The deceased Mahesh was pillion rider on motorcycle bearing Registration No.MH-25-C-4675. It collided with Jeep bearing Registration No.MH-25-B-201, which was coming from opposite side. The deceased suffered fatal injuries in the said accident. The claimants raised claim against the owner and insurer of the motorcycle without adding owner and insurer of the Jeep. Therefore, the claim was bad for non-joinder of the parties. He would further contend that the deceased being pillion rider on the motorcycle, his risk is not covered under the insurance policy. However, the learned Tribunal passed impugned award ignoring the aforesaid defences raised by the appellant-Insurer. To buttress his submissions, he relies upon the judgment of the Supreme Court in case of ***United India Insurance Co. Ltd. Shimla Vs. Tilak Singh and Others***[1].

4. Per contra, Mr. Wakure, learned Advocate appearing for claimants/orig. respondent nos.1 and 2 would submit that the present claim is filed under Section 163-A of the Motor Vehicle Act. The compensation would be payable without going to the aspects of the negligence. The claimants have consciously chosen to file claim against owner and insurer of the motorcycle and no fault can be found in such claim. He would submit that it would be the choice of the claimants to raise claim against any of the joint tortfeasor. Mr. Wakure, learned Advocate would invite attention of this Court to the insurance policy of the motorcycle, which is 'Package Policy' to contend that insurer cannot avoid liability towards pillion rider of the motorcycle.

1 **(2006) 4 SCC 404.**

5. Having considered submissions advanced on behalf of the respective parties and after going through the pleadings and evidence as recorded before the Tribunal, apparently, the claimants have filed the claim seeking compensation towards death of their son invoking provisions of Section 163-A of the Motor Vehicle Act. It is not in dispute that the motorcycle insured with the appellant was involved in the accident and deceased was pillion rider on the said motorcycle. The Supreme Court in case of ***Khenyei Vs. New India Assurance Co. Ltd.***[2] observed that it is sweet choice of the claimants to prosecute the remedy against any one of joint tortfeasor. Applying the principles of law in the facts of the present case, no fault can be found in the claim petition, when claimants have raised their claim only against owner and insurer of the motorcycle. Secondly, the present claim is filed under Section 163-A of the Motor Vehicle Act, which stipulates the liability to pay the compensation de-hors the pleadings and proof of negligence against the respondent-vehicle owner. In that scenario, non-impleadment of the owner and insurer of the Jeep as party to the petition would not frustrate the claim. The Tribunal had specifically framed Issue No.4 on this aspect and recorded appropriate findings in tune with the principles of law. This Court do not find any reason to disturbed the view taken by the Tribunal.

6. So far as the second limb of the argument advanced on behalf of the appellant/insurer that risk of the pillion rider is not covered under policy, this Court finds no substance in such contentions. Apparently, motorcycle in question is insured under 'Comprehensive Package Policy'. The Insurance Regulatory and Development Authority vide its Circular dated 16.11.2009 clarified that in case of pillion rider on the motorcycle insured under 'Package Policy', insurer would assume the liability towards pillion

2 **(2015) 9 SCC 273.**

rider of Two Wheeler, as if he is third party. The scope and purport of the aforesaid Circular is discussed by this Court in case of ***Popat Kacharu Kedar Vs. Jyoti W/o Santosh Kedar Alias Jyoti*** (***First Appeal No.2057/2010***) decided on ***11.08.2011***. Similar view is approved by the Supreme Court in case of ***National Insurance Co. Ltd. Vs. Balakrishnan and Another***[3]. So far as reliance of the appellant on the judgment of the Supreme Court in case of ***United India Insurance Co. Ltd. Shimla Vs. Tilak Singh and Others*** (supra), this Court finds that it would be of no assistance to the appellant-Insurer, since it deals with the statutory liability of the insurer under 'Act Only' policy, whereas in the present case the policy issued by the appellant-Insurer is a 'Comprehensive Package Policy', which would be governed by the principles of law espoused in case of ***National Insurance Co. Ltd. Vs. Balakrishnan and Another*** (supra).

7. In that view of the matter, no ground for interference in the judgment and award passed by the Tribunal is made out. Resultantly, following order is passed.

ORDER

a. The First Appeal is dismissed with cost.

b. The amount deposited by the appellant / insurer be disbursed to respondent nos.1 and 2 i.e. original claimants in terms of Award passed by the Tribunal.

c. In view of dismissal of the First Appeal, pending Civil application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2024

3 **(2013) 1 SCC 731.**