2024:BHC-AUG:3067

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1871 OF 2010

UNITED INDIA INSURANCE COMPANY LTD
VERSUS
MANKARNABAI RAMESH SONTAKKE AND ORS
...

Mr. D. V. Soman, Advocate for Appellant.
Mr. A. D. Hande h/f Mr. A. M. Gaikwad, Advocate for Respondent Nos.1 to 6.

...

WITH
CIVIL APPLICATION NO. 11444 OF 2003
IN FA/1871/2010

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 12th FEBRUARY, 2024.

PER COURT:-

1. By this appeal filed under Section 173 of the Motor Vehicle Act the appellant is impugning the judgment and award dated 27.02.2003 passed by the Motor Accident Claims Tribunal, Nanded in Motor Accident Claim Petition No.434/2000.

2. Mr. Soman, learned Advocate appearing for the appellant submits that the present appeal is filed mainly on the ground that name of the deceased was not appearing in the First Information Report. The death of the unknown person was reported in the accident. As such, identity of the deceased as victim of subject accident could not be established. He submits that the passenger carrying capacity of the insured vehicle was only 21 passengers, whereas it was carrying 60 to 70 passengers, as such, there is breach of the condition of policy. Except aforesaid two contentions, no other ground is put into service while arguing the appeal.

3. Mr. Hande, learned Advocate appearing for the respondents submits that the Tribunal on consideration of the

evidence on record has concluded that the deceased died on account of motor vehicle accident involving the mini bus in question. He would point out that merely because excess number of passengers were carried in the vehicle, the insurer cannot seek exoneration from the liability to pay the compensation. To buttress his submissions he relied upon the judgments of the Supreme Court of India in the matters of ***National Insurance Co. Ltd. Vs. Anjana Shyam***[1] and ***United India Insurance Co. Ltd. Vs. K. M. Poonam***[2].

4. Having considered submissions advanced, it is apparent that the FIR do not indicate the name of the deceased person. However, the evidence on record clearly depicts that the brother of the deceased i.e. Ramchandra Sontakke has been examined before the Tribunal who testified that he identified the dead body to be of his brother Ramesh during the course of investigation. No contra evidence is brought on record to show that the person died was not Ramesh Sontakke. Apparently, insurer has not brought any evidence on record to controvert the contentions of the appellant. The Tribunal appreciated the aforesaid aspect and recorded positive findings based on material on record that Ramesh Sontakke died in accident involving insured bus. The view taken by the Tribunal is a probable and in absence of the contra evidence, there is no reason to interfere in the findings recorded by the Tribunal.

5. So far as another contention raised on behalf of the insurer that the excess number of passengers were carried in the bus than its permitted capacity that constitutes breach of condition of policy, now it is well settled that merely because vehicle carries excess number of passengers, the insurer cannot

1 **AIR 2007 SC 2870.**
2 **(2015) 15 SCC 297.**

seek exoneration of its statutory liability to pay compensation atleast to the extent of number of passengers covered under the policy. In the present case, admittedly the policy covers the risk of as many as 21 passengers and only present claim has been reported.

6. At this stage reference can be given to observations of the Supreme Court of India in case of ***United India Insurance Co. Ltd. Vs. K. M. Poonam*** (supra) that reads as under:

> *"The liability of the insurer, therefore, is confined to the number of persons covered by the insurance policy and not beyond the same. In other words, as in the present case, since the insurance policy of the owner of the vehicle covered six occupants of the vehicle in question, including the driver, the liability of the insurer would be confined to six persons only, notwithstanding the larger number of persons carried in the vehicle. Such excess number of persons would have to be treated as third parties, but since no premium had been paid in the policy for them, the insurer would not be liable to make payment of the compensation amount as far as they are concerned. However, the liability of the Insurance Company to make payment even in respect of persons not covered by the insurance policy continues under the provisions of sub-section (1) of Section 149 of the Act, as it would be entitled to recover the same if it could prove that one of the conditions of the policy had been breached by the owner of the vehicle."*

7. Resultantly, there is no merit in the appeal. Hence, Appeal stands dismissed.

8. In view of dismissal of appeal, the Civil Application No.11444/2003 is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE