IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1911 OF 2012

Deelip Sonu Jadhav
age 60 yrs, Occ. Business,
R/o Plot No.55, Gajanan Society,
Station Road, Ahmednagar. Appellant.
Dist. Ahmednagar. Orig opponent.

VERSUS

1. National Insurance Co Ltd
Through its officer Incharge/Manager,
Divisional Office, Near S.T. Stand,
Railway Station Road, Ahmednagar Orig opp. no.2

2. Shrimati Sujata Sumit Karnavat,
age 29 yrs, Occ. Household,

3. Raj Sumit Karnavat,
age 8 yrs, Occ. Education.

4. Khushi Sumit Karnavat,
age 6 yrs, Occ. Education.
(Resp No.3 and 4 through their natural
guardian / mother resp no.2.)

5. Shri Rameshlal Hansraj Karnavat,
age 58 yrs Occ. Nil.

6. Sou. Hirabai Rameshlal Karnavat,
age 52 yrs, Occ. Nil.

All Respondents above resident
Of Bhawani Nagar, Ahmednagar,
Dist. Ahmednagar. Respondents.
(orig claimants 2 to 6)

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Advocate for Appellant : Mr. S.V. Mundhe
Advocate for Respondent 1 : Mr. A.B. Kadethankar
Advocate for Respondents 2-6 : Mr. V P Latange

CORAM : S. G. CHAPALGAONKAR, J.
Dated : April 18, 2024

ORAL JUDGMENT :-

1. The appellant/original respondent no.1-owner of the vehicle impugns the judgment and award passed by the Tribunal in MACP No.712 of 2004 dated 15.11.2008, by which the liability of insurer to pay compensation is restricted to Rs.50,000/- and rest is mulcted on appellant.

2. Mr. Mundhe, learned advocate appearing for the appellant submits that the offending vehicle i.e. the Indica Car bearing registration No.MH-14/X-5671 was insured under a comprehensive policy. Although, it is registered as a private vehicle, in view of the nature of insurance policy, risk of occupants would also be covered. He relies upon the judgment of the Supreme Court of India in case of **National Insurance Co. Ltd., Vs. Balakrishnan and another reported in 2013 (1) SCC 731**. He would also place reliance on the circular dated 16.11.2009 issued by the Insurance Regulatory And Development Authority (IRADA) explaining that in case of a comprehensive policy in respect of a private car, risk of the occupants would be covered.

3. Mr. Kadethankar, learned advocate appearing for the respondent-insurer fairly concedes to legal and factual position falling from circular issued by the IRDAI, that risk of the occupant traveling in the private car, insured under the comprehensive policy is covered, as if they are third parties.

He did not dispute that the issue involved in this appeal is squarely covered by dictum of Supreme Court of India in case of **Balkrishnan** (supra).

4. In view of the aforesaid submissions and considering the observations of the Supreme Court in case of Balkrishna (supra) coupled with the IRADA circular dated November 19, 2009, there cannot be restricted liability in respect of the occupants of the private car insured under package policy. The reliance of the Tribunal on the judgments of this Court in case of **Oriental Insurance Company Vs. Smt. Aruna Chagan Kalamkar** reported in **2008 (3) AIR, Bombay 217** would be of no assistance in view of the subsequent development that led to issuance of the circular by IRDAI. In that view of the matter, the award passed by the Tribunal requires to be modified and the appeal needs to be allowed. Hence, the following order.

O R D E R

i. First appeal is partly allowed.

ii. The Award passed by the Motor Accident Claims Tribunal, Ahmednagar in M.A.C.P. No.712 of 2004 dated 15.11.2008 is modified.

iii. The respondent nos.1 and 2 shall jointly and severally pay compensation of Rs.5,98,000/- alongwith the interest @ 6% p.a. to the claimants from the date of filing of the claim petition.

iv. The award to the extent of apportionment of the compensation shall remain undisturbed.

v. First Appeal is accordingly disposed off.

(S. G. CHAPALGAONKAR, J.)

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aaa/- (f)