IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2541 OF 2013

United India Insurance Co. Ltd.,
Throughi it's Divisional Manager and authorised
representative & Signatory, Ahmednagar
Divisional Office,
Kisan Kranti Building, Ahmednagar,
Dist. Ahmednagar.

.. Appellant
(Ori. Opponent No.2)

VERSUS

1. Smt. Archana Sanjay Sanap,
   Age 30 years, Occ. Nil.

2. Miss Payal Sanjay Sanap
   Age major, Occ. Nil
   through Natural Guardian Res. No.1 – Mother
   Respondent Nos. 1 and 2
   R/o. Dharangaon, Taluka Kopargaon,
   Dist. Ahmednagar.

3. Rajaram Bhaguji Sanap
   Age 68 years, Occ. Labour.

4. Janabagi Rajaram Sanap
   Age 66 years, Occ. Nil.

   Res. Nos. 3 to 4 : R/o. Mukhed, Tal, Yeola,
   Dist. Nashik.

5. Sachin Gopinath Pawar
   Age major, Occ. Fitter,
   R/o. Murshatpur, Tal. Kopargaon,
   Dist. Ahmednagar.

.. Respondents
(No.1 to 4 Ori. Claimants
No.5 – Ori. Opp. No.1)

Mr. A.B. Gatne, Advocate for the appellant

Mr. A.S. Gandhi, Adv. For respondent No.1.
Respondent No.2 under guardianship of respondent No.1
Respondent Nos. 3 to 5 served.

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 18th APRIL, 2024.
PRONOUNCED ON : 6th MAY, 2024.

JUDGMENT :-

1. The appellant – original respondent No.2/insurer impugns the judgment and award dated 23.1.2013 passed by the Motor Accident Claims Tribunal, Kopargoan in MACP No. 100 OF 2005.

2. **Brief facts giving rise to the present appeal are narrated as under :-**

Late Sanjay was proceeding as a pillion rider on motorcycle bearing registration NO. MH-15/V-947. His friend Dadasaheb was riding the motorcycle. At that time a jeep bearing Registration MH-16/F 5287 came from opposite direction and collided with the motorcycle. In said accident, riders of the motorcycle fatal suffered injuries.

3. The motorcycle in question was owned by respondent No.5 and insured with the appellant at the time of accident. Respondent Nos. 1 to 4 – dependents of deceased Sanjay instituted a claim under Section 163A of the Motor Vehicles Act, seeking compensation of Rs. 4,85,000/- from owner and insurer of the motorcycle.

4. The claim was contested by the appellant/insurer by raising

various defences. However, the Tribunal, after recording evidence on behalf of the claimants, allowed the claim petition, directing owner and insurer of the motorcycle to pay compensation of Rs. 4,42,000/- alongwith interest @ 7.5% p.a. to the claimants, under the impugned award dated 23.1.2013.

5. Mr. Gatne, learned advocate for the insurer would submit that the admittedly, late Sanjay was a pillion rider of the motorcycle insured with the appellant. The insurance policy was “liability only policy” issued in terms of Section 147 of the Motor Vehicles Act. The risk of pillion rider was not covered under such policy. However, the Tribunal erroneously assumed liability of the insurer and passed an award, holding the owner and insurer of the motorcycle jointly and severally liable to pay the compensation. He invited attention of this Court to the following judgments :-

[I] ***Oriental Insurance Co. Ltd. Vs. Sudhakaran K.V. and others. AIR 2008 SC 2729***

[ii] National Insurance C. Ltd. Vs. Balkrishnan (2013) 1 SCC 731

Relying upon aforesaid judgments, he contends that the statutory scheme under section 163A of the Motor Vehicles Act does not contemplate to cover the risk of pillion rider of the motorcycle. He would, therefore, urge to allow the appeal and set aside the award as against the appellant-insurer.

6. Mr. Amol S. Gandhi, learned advocate for the respondents-claimants supports the award contending that no specific defence has been raised in the written statement filed by the insurer. The claim has

been filed under Section 163A of the Motor Vehicles Act. The insurer can not avoid the liability, when the motorcycle was insured at the time of accident.

7. Having considered the submissions advanced by learned advocates appearing for the respective parties, the only point that arises for consideration in this appeal is,

"whether in the facts of the case, respondent No.2 insurer can be made liable to pay compensation in terms of insurance contract, in respect of insured motorcycle ?".

8. Deceased Sanjay was admittedly traveling as a pillion rider on the motorcycle at the time of accident. His friend Dadasaheb was riding the motorcycle. Perusal of the insurance policy shows that it is titled as ***"motorcycle/scooter liability only policy"***. The schedule of premium depicts that the basic third party risk is covered and additionally, personal accident cover to ***"Owner-Driver"*** is extended for Rs. 1 Lakh. The contents of the insurance policy are not disputed by the parties.

9. The Supreme Court of India in the case of ***United India Insurance Co. Ltd. Shimla Vs. Tilak Singh and others reported in (2006)4 SCC 404***, while interpreting the provisions of Section 147 of the Motor Vehicles Act in a claim arising out of death of pillion rider of motorcycle, extended application of the law laid down in the case of ***"New India Assurance Co. Ltd. vs. Asha Rani and others reported in (2003)2 SCC 223***, as regards to term 'Third Party' within meaning of provisions of Act

of 1988 and observed as under :-

> *"21. In our view, although the observations made in Asha Rani Case were in connection with carrying passengers in a goods vehicle, the same would apply in equal force to gratuitous passengers in any other vehicle also. Thus, we must uphold the contention of the appellant Insurance Company that it owned no liability towards the injuries suffered by deceased Rajinder Singh who was a pillion rider, as the insurance policy was a statutory policy, and hence it did not cover the risk of death of or bodily injury to a gratuitous passenger."*

10. Similarly, the issue has been considered in a subsequent judgment in the case of ***Oriental Insurance Company Ltd. Vs. Sudhakaran K.V. reported in AIR 2009 SC 2729*** and the Supreme Court reiterated the legal position in the following words :-

> *"19. The law which emerges from the said decisions is, (I) the liability of the insurance company in a case of this nature is not extended to a pillion rider of the motor vehicle unless the requisite amount of premium is paid for covering his/her risk; (ii) the legal obligation arising under Section 147 of the Act cannot be extended to an injury or death of the owner of vehicle or the pillion rider; (iii) the pillion rider in a two wheeler was not to be treated as a third party when the accident has taken place owing to rash and negligent riding of the scooter and not on the part of the driver of another vehicle."*

11. Applying the aforesaid principles of law espoused by the Supreme Court of India to the facts of the present case, the directions given by the Tribunal under the impugned judgment and award fixing liability to pay the compensation on shoulders of appellant insurer cannot be countenanced.

12. Although Mr. Gandhi, learned advocate for respondents/claimants endeavors to point out inadequate pleadings in the written statement of the insurer, he could not persuade this court to assume liability of insurer in wake of crystallized legal position as discussed above. It is trite that law need not be pleaded. If the liability of the insurer is based on statutory provisions and such statutory provisions do not extend liability towards pillion rider of the two-wheeler, mere lacuna in the pleadings cannot be dragged to extend insurance cover beyond statutory scheme and grant benefit in favour of the claimants. The liability of the insurer will have to be fixed within the parameters of the statutory provisions, mandating specified insurance cover in tune with Section 147 of M.V. Act 1988 or additional contract extending such cover. The copy of insurance policy admitted in evidence before Tribunal is bereft to cover risk of pillion rider. In that view of the matter, the impugned award can not be sustained. Hence the following order :-

O R D E R

[A] First appeal is allowed;

[b] Impugned judgment and award dated 23.1.2013 passed by the Motor Accident Claims Tribunal, Kopargaon in MACP No. 100 of 2005 is hereby quashed and set aside.

[c] The amount of compensation, if any, deposited by the appellant/insurance company be refunded alongwith interest accrued thereon.

[S.G.CHAPALGAONKAR]
JUDGE

grt/-