IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 2498 OF 2013
WITH
CIVIL APPLICATION NO. 10893 OF 2012
IN FA/2498/2013

The Oriental Insurance Company Ltd.
Sant Krupa Market, G.G. Road,
Nanded. ..Appellant
(Ori. Respondent No.3)

Versus

1. Sahebrao s/o Shivram Rapewad,
Age 24 years, Occu. Labour,
R/o. Morgaon, Tq. Himayatnagar,
Dist. Nanded.

2. Mariba s/o Shivram Rapewad,
Age 22 years, Occu. Labour,
R/o. As above.

3. Madhav s/o Shivram Rapewad,
Age 20 years, Occu. Labour,
R/o. As above.

4. Smt. Shabanabegum w/o Syed Arif,
Age 27 years, Occu. Household.

5. Mainmunnisabegum w/o Syed Abbas Patel,
Age 62 years, Occu. Household.

Respt. No.4 & 5 R/o. Mudhol Galli Bhokar,
Tq. Bhokar, Dist. Nanded.) ..Respondents
(Orig. Respt. no.1 & 2)

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Mr. Uday S. Malte, Advocate for Appellant.
Mr. Amit Tendulkar h/f Mr. G. G. Kadam, Advocate for Respondent Nos.1 to 3.
Mrs. M. R. Jamdhade, Advocate for Respondent Nos.5.

WITH
CIVIL APPLICATION NO. 11668 OF 2016
IN FA/2498/2013

1. Sahebrao s/o Shivram Rapewad,
Age 24 years, Occu. Labour,
R/o. Morgaon, Tq. Himayatnagar,
Dist. Nanded.

2. Mariba s/o Shivram Rapewad,
Age 22 years, Occu. Labour,
R/o. As above.

3. Madhav s/o Shivram Rapewad,
Age 20 years, Occu. Labour,
R/o. As above. ..Applicants
(Ori. Claimants)

Versus

1. The Oriental Insurance Company Ltd.
Sant Krupa Market, G.G. Road,
Nanded. ..Ori. Appellant

2. Smt. Shabanabegum w/o Syed Arif,
Age 35 years, Occu. Household,
R/o. Mudhol Galli, Bhokar,
Tq. Bhokar, Dist. Nanded.

3. Mainmunnisabegum w/o Syed Abbas Patel,
Age 65 years, Occu. Household.
R/o. As above. ..Respondents
(Resp. Nos.2 & 3
Ori. Respondents.)

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Mr. Amit Tendulkar h/f Mr. Gajanan G. Kadam, Advocate for Applicants.
Mrs. M. R. Jamdhade, Advocate for Respondent No.5.
Mr. U. S. Malte, Advocate for Respondent No.1.

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

JUDGMENT:-

1. The appellant/insurer approaches this Court under Section 173 of the Motor Vehicle Act, 1988 thereby assailing judgment and award dated 16.01.2012 passed by the Motor Accident Claims Tribunal at Bhokar, Dist. Nanded in MACP No.162/2010.

2. The respondents/original claimants had approached the Tribunal under Section 166 of the Motor Vehicle Act seeking compensation from original respondents.

3. In nutshell it is a case of the claimants that the accident in question took place due to rash and negligent driving

of the motor vehicle bearing registration no.MH-26-B-8313, which was proceeding towards Nanded from Dhanora. It was carrying the passengers. The driver lost the control over the Jeep and it dashed against road side Babool tree. The occupants of the vehicle suffered severe injuries. One Rajnika lost her life on the spot. The incident was reported to police. Accordingly, an offence was registered with Himayat Nagar Police Station against Jeep driver.

4. The appellant, who is insurer of the Jeep resisted the claim alleging breach of terms and conditions of the policy. The Tribunal after considering the evidence on record allowed the claim petition and passed award against the original respondents.

5. Mr. Malte, learned Advocate appearing for the appellant/insurer vehemently contends that the vehicle in question was registered and insured under 'Third Party' policy. Although, carrying capacity of the vehicle is only 5+1, as many as 13 passengers were carried in the Jeep at the time of accident. Tribunal accepted defence of the Insurance Company, however, passed an award in the nature of 'Pay and Recovery'. He would submit that since vehicle is insured under third party policy, insurer ought to have been exonerated.

6. The learned Advocate appearing for the claimants supports the award contending that the Tribunal has passed well reasoned order and do not call for interference in exercise of appellate jurisdiction of this Court.

7. Having considered submissions advanced, apparently there is no dispute as regards to the accident involving insured Jeep bearing registration no.MH-26-B-8313 and consequential injuries suffered by the occupants of the vehicle. The appellant

raises objection to the award in the nature of 'Pay and Recovery' contending that vehicle in question was insured under liability only policy hence occupants were not covered. Further claimants have failed to prove that driver was authorized to drive vehicle in question by valid driving license.

8. Section 146 of the Motor Vehicle Act mandates that every vehicle shall be insured to cover the risk in terms of Section 147 of the Motor Vehicle Act. Apparently, the owner of the vehicle had obtained the third party policy in respect of vehicle. The vehicle in question is registered as passenger vehicle. The vehicle is also having fitness certificate. The driver employed had badge for Taxi. The material on record is indicative of the fact that the vehicle in question was registered and insured as commercial vehicle. Even contents of the FIR and pleadings in the claim petition shows that it was black-yellow Taxi. In that view of the matter, apparently vehicle was used as Taxi and was authorized to transport the passengers. Perusal of the written statement filed on behalf of Insurance Company nowhere mentions that the vehicle in question was registered as private vehicle or it was not authorized to carry passengers. In this background passengers carried in vehicle falls within statuary umbrella of insurance cover u/s 147 of M.V. Act 1988. Hence contrary submissions advanced on behalf of appellant- insurer cannot be accepted.

9. The second contention advanced on behalf of the appellant is that the vehicle was carrying excess passengers beyond permitted capacity, as such, there is breach of conditions of policy. It is well settled that merely carrying of excess passengers does not extinguish the insurance contract. In case of ***United India Insurance Co. Ltd. Vs. K. M. Poonam***[1] it is held that insurer cannot avoid liability to pay the compensation for

1 **(2015) 15 SCC 297.**

such reason and even for the excess number of passengers than permitted limit, award in the nature of pay and recovery can be passed. Apparently, in this case it is not pointed out that the claim petitions more than permitted limit of the passenger have been filed or such awards are satisfied by the Insurance Company. On specific query to the learned Advocate appearing for the appellant, he could not pin point other claims, if raised arising out of said accident barring three claims which are subject matter of group of appeals before this Court.

10. So far as issue of driving license is concerned, the Tribunal has categorically observed that the copy of driving license is placed on record and same is indicative of the fact that the driver had valid authorization at the time of accident. No contrary evidence is brought on record. It is trite that once, *prima facie*, burden is discharged by the claimants or owner of the vehicle by producing requisite documents, it is for the insurer to bring on record necessary evidence in support of its allegations regarding breach of condition of the policy. In the present case, no such evidence is recorded. In view of the aforesaid observations, there is no merit in the Appeal. Hence, Appeal stands dismissed.

11. If any amount is deposited by the appellant/insurer in this Court in pursuance of the award passed by the Tribunal, it be disbursed to the claimants.

12. In view of dismissal of the Appeal, pending Civil Applications also stand disposed of.

(S. G. CHAPALGAONKAR)
JUDGE