**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.3850 OF 2019

Shriram General Insurance Company Ltd.
Through its Divisional Manager,
10003-E-8 EPIP, RIICO Industrial Area,
Sitapura, Jaipur, Tq. & Dist. Jaipur.
Through its Branch Manager/Authorised Signatory,
Branch at Aurangabad
Akashwani Jalna – Aurangabad Road,
Dist. Aurangabad 431 005 … Appellant
(Org. Respondent No.2)

Versus

1] Usha W/o. Ratnakar Nagargoje
Age: 44 Years, Occu. Household

2] Shital D/o Ratnakar Nagargoje
Age: 26 Years, Occu. Education

3] Mahesh S/o. Ratnakar Nagargoje
Age: 24 Years, Occu. Education

4] Mayuri D/o Ratnakar Nagargoje
Age: 22 Years, Occu. Household,

5] Baburao S/o. Madhavrao Nagargoje
Age: 75 Years, Occu. Agriculture,

6] Pramila W/o. Baburao Nagargoje
Age: 69 Years, Occu. Household

All R/o. Mandekhel, Tq. Ambejogai,
Dist. Beed

7] Sopan Marotrao Karhale (Died)
Through his legal representatives

7A] Laxman S/o Sopanrao Karhale,
Age: 50 years, Occu. Agriculture,

7B] Uttam S/o Sopanrao Karhale,
Age: 45 Years, Occu. Agriculture

Both R/o Gaundgaon, Tq. Gangakhed,
Dist. Parbhani … Respondents
(Rspdt Nos.1 to 6 – Org. Claimants
Rspdt Nos.7 – Org. Rspdt No.1)

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Mr. Abhijit G. Choudhari, Advocate for Appellant

Mr. B.R. Kedar, Advocate for Respondent Nos.1 to 6
Mr. Mahesh P. Kale, Advocate for Respondent Nos.7A & 7B

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 15th OCTOBER, 2024
PRONOUNCED ON : 18th OCTOBER, 2024

JUDGMENT :

1. Heard.

2. Admit. Taken up for final hearing by the consent of the parties.

3. Insurance Company has filed this appeal under Section 173 of Motor Vehicles Act, challenging the judgment and award dated 15/03/2019, passed by the Motor Accident Claims Tribunal, Ambajogai, in M.A.C.P. No.114/2012.

4. Respondent Nos.1 to 6/claimants filed claim petition contending that they are legal heirs of Ratnakar Baburao Nagargoje. On 30/07/2012, he was proceeding from Parbhani to Gangakhed as a pillion rider on motor cycle bearing No.MH-22-Q-7008, driven by his friend Dyanoba Digambar Tandale. When they reached near Mahatpuri Phata, tempo bearing No.MH-04-BU-2478 came from Parbhani i.e. back side of the motorcycle and gave forceful dash to motorcycle, due to which deceased Ratnakar died on the spot. The accident occurred due to rash and negligent driving of tempo driver Munja Laxman Karhale. C.R. No.128/2012 is registered with

Gangakhed Police Station, Parbhani, for offence punishable under Sections 279, 304-A, 337, 338 of I.P.C. and Section 184 of Motor Vehicles Act, against the said driver. At the time of death deceased was 43 years old and was serving as Teacher at Prerna Primary School, Gangakhed, District Parbhani, and was getting salary of Rs.25,263/- per month. He was the sole bread earner of the family. Claimants, therefore, claimed compensation of Rs.46,53,535/-, but because of their weak financial condition they restricted the claim to Rs.5,00,000/-.

5. Respondent No.7, owner of the offending vehicle, failed to file written statement. He died during the pendency of claim petition and his legal heirs were brought on record. By filing written statement they denied the liability contending that offending vehicle was insured with appellant Insurance Company and it is liable to pay the compensation.

6. Appellant/Insurance Company opposed the claim by filing written statement. It is claimed that offending vehicle was purchased on finance and insurance premium of Rs.16,238/- was received from Financer on 05/10/2011 and Policy No.10000/31/12/401873, which was to commence from 29/12/2011, was issued. Respondent No.7/owner settled his account with Financer and on 18/11/2011 a request for cancellation of said policy was submitted. Accordingly the policy was cancelled. On the date of accident there

was no subsisting policy and hence, it is not entitled to indemnify claimants. In the alternate, it is contended that driver of the offending vehicle did not possess valid and effective driving license, therefore, due to breach of terms and conditions of policy it is not liable to pay the compensation. Tribunal after recording evidence partly allowed the claim and awarded compensation of Rs.10,19,240/- along with 9% interest, to be paid jointly and severally by appellant/Insurance Company and respondent No.7/owner. Hence, this appeal is filed by Insurance Company claiming that it is not liable to pay the compensation.

7. Heard learned advocate for appellant/Insurance Company, learned advocate for respondent Nos.1 to 6/claimants and learned advocate for respondent Nos.7A and 7B/ legal heirs of owner of offending vehicle.

8. Learned advocate for appellant assailed the impugned judgment and award contending that the Tribunal has misread and misconstrued the evidence on record. Though the Insurer has brought on record cancellation request form (Exhibit-66) and the fact of cancellation of policy before it’s commencement, Tribunal has erroneously held Insurer liable to pay the compensation. By relying on loan account statement (Exhibit-64) and the policy (Exhibit-65) and cancellation form (Exhibit-66), he submits that since the policy was already cancelled before it’s commencement

and premium was returned back, there was no subsisting valid insurance policy on the date of accident. It is, therefore, clear that offending vehicle was not insured on the date of accident and therefore, Tribunal has erred in holding appellant liable to indemnify claimants.

9. Per contra, learned advocate for respondent Nos.1 to 6/claimants supported the impugned judgment and award. He submits that the Tribunal has given elaborate reasons while recording finding that Insurer is liable to indemnify claimants. By relying on ***Vallabhdas and Others Vs. Pritamsingh and Another, 2016(4) All.M.R. 225,*** and ***Oriental Insurance Co. Ltd. Vs. Vijay Ramchandra Kale, 2018(1) Bom.C.R.390,*** he submits that there is no merit in the appeal and the same is liable to be dismissed.

10. Heard learned advocate for appellant, learned advocate for respondent Nos.1 to 6 and learned advocate for respondent Nos.7A and 7B at length. Perused the record.

11. Learned advocate for appellant has heavily relied on cancellation request form (Exhibit-66) for claiming that at the instance of owner insurance policy was cancelled. Admittedly, the offending vehicle was insured with appellant for the period from 29/12/2010 to 28/12/2011 vide policy bearing No.10003/31/11/

370203. Thereafter the policy in question bearing No.10003/31 /12/401873 (Exhibit-76) was issued by accepting premium of Rs.16,238/-. The same is package policy.

On the basis of cancellation request form (Exhibit-66) signed by original owner of offending vehicle Policy No.10003/31 /12/401873 (Exhibit-76) was cancelled. Perusal of cancellation form (Exhibit-66) shows that there are interpolations in policy number wherein earlier Policy No.10003/31/11/370203 is scored and subsequent Policy No. 10003/31/12/401873 is written. Year of the policy start date is corrected from ‘10’ to ‘11’. At the bottom side, in the column of customer policy details, there is overwriting in policy number ‘10003’ and old policy No.10003/31/11/370203 is mentioned, so also, policy start date is mentioned as 29/12/2010 and policy expiry dated is mentioned as 28/12/2011. IDV of the vehicle is mentioned as Rs.2,70,000/-, whereas in policy (Exhibit-76) which is claimed to be cancelled, IDV for the vehicle is mentioned as Rs.3,74,134/-. At the bottom of policy in question (Exhibit-76), GSTIN number is mentioned.

12. Perusal of evidence of appellant’s witness Tushar Bandale, Senior Legal Manager, shows that both policies in the present matter were from Jaipur, Rajasthan. Premium of the policy in question (Exhibit-76) was received on 04/11/2011, however, in the written statement Insurer has stated that the premium is

received on 05/10/2011, which according to him is true and correct. He has admitted that policy (Exhibit-76) was issued on 04/11/2011. However, no date of issuance is mentioned on said policy. He further claimed that policy (Exhibit-76) was cancelled on 23/11/2011. He admitted that all financial transactions of the company are computerised. They did not receive any request or application from original owner for cancellation of policy. He admitted the interpolation and scoring of policy number and policy start date in the cancellation form (Exhibit-66). Though he has denied suggestion that cancellation form (Exhibit-66) pertains to policy of 2010-11, record speaks otherwise.

13. Bare reading of cancellation form (Exhibit-66) shows that even if it is accepted that there was request on the part of original owner for cancellation of policy, the same was in respect of policy of 2010-2011 and not for the policy (Exhibit-76) i.e. policy of 2011-2012. Admittedly, the owner had not applied or requested the Insurer to cancel the policy. He has further admitted that in the year 2011 Insurer did not have GSTIN number and GST is made applicable from 01/04/2018. Admittedly, on the policy (Exhibit-76) GSTIN number is mentioned. It is, therefore, clear that Insurer has prepared cancellation form (Exhibit-66) by interpolation and scoring to deny it’s liability to indemnify claimants.

14. It is claimed by Insurance Company that as the original

owner foreclosed his loan account with Financer, he requested for cancellation of policy (Exhibit-76). Admittedly, after cancellation of policy the premium amount was returned to the Finance Company as consolidated sum of different matters. If the original owner had foreclosed the loan account with Financer, then the Insurance Company ought to have returned the premium amount to original owner and not to the Finance Company. This also creates doubt about the contention of Insurer that the policy was cancelled at the behest of original owner.

Admittedly, the IDV of previous policy was Rs.2,70,000/- and IDV of policy in question (Exhibit-76) was Rs.3,74,134/-. In cancellation request form (Exhibit-66) IDV is mentioned as Rs.2,70,000/- which is of the previous policy and therefore, it cannot be said that by cancellation form (Exhibit-66) original owner requested for cancellation of policy in question (Exhibit-76).

15. Admittedly, no intimation of alleged cancellation of policy (Exhibit-76) is given by appellant to R.T.O. In ***Vallabhdas and Others*** (supra), this Court by relying on *Oriental Insurance Co. Ltd. vs. Inderjit Kaur and Others, 1998 ACJ 123*, and *Daddappa and Others vs. Branch Manager, National Insurance Co. Ltd., 2008 ACJ 581*, has held,

> "*9. The provisions of Section147(4) of the said Act cast a duty upon the insurer to notify the fact of a cover note not being followed by a valid policy to the registering authority within period of seven days from the expiry of period of validity to the*

cover note. The aforesaid provisions have been considered by the Supreme Court in Oriental Insurance Company (supra) and Daddappa and Ors. (supra). It has been held therein that in sofar as a third party is concerned, it is not concerned with the cancellation of the policy and on failure to comply with provisions of Section 147(4) of the said Act, the insurance Company cannot be absolved of its liability. These decisions have been followed by the Division Bench of Kerala High Court in case of Wilson (supra). The decision relied upon in the case of United India (supra) is on the aspect of fraud and is distinguishable on facts.

The legal position is therefore clear that in absence of the insurer intimating the registering authority about cancellation of its cover note, its liability qua a third party does not get extinguished. In the present case, it is not the stand of the respondent No.2 that in terms of Section 147(4) of the said Act any such intimation was given to the registering authority. Point No.1 is accordingly answered by holding that the respondent No.2 cannot be absolved of its liability qua the third party."

16. In the light of above observation, there is no merit in the contention of appellant that policy in question was cancelled and therefore, it is not liable to indemnify claimants. Tribunal has dealt with this defence of the Insurer in more than 22 paragraphs and has given elaborate reasons for not accepting it. The Tribunal has passed a well reasoned judgment which is not liable to be interfered with. Appeal being devoid of merit is dismissed, with costs.

17. Amount deposited by the Insurance Company be paid to claimants along with accrued interest.

(NITIN B. SURYAWANSHI, J.)