2024:BHC-AUG:9374

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.505 OF 2014**

New India Assurance Co. Ltd.
Branch Manager, Sathe Chowk, Beed
Through its authorized signatory,
Sr. Div. Manager, Legal Hub,
New India Assurance Co. Ltd., R/o Aurangabad ..Appellant

Versus

1. Subhash s/o Ashruba Hivale
Age 36 yrs, Occ. Labour
R/o Govindwadi, Majalgaon, Tq. Dist. Beed.

2. Ushabai w/o Subhas Hivale
Age 33 yrs, Occ. Labour
R/o as above. Orig. Claimants

3. Rustum s/o Sundarrao Hazare
Age 43 yrs, Occ. Business
R/o Govindwadi, Majalgaon, Tq. Dist. Beed.
..Respondents
(Orig. Claimants & R. No.1)

...

Mr. D. P. Deshpande, Advocate for the Appellant.
Mr. K. B. Jadhavar (absent), Advocate for Respondent Nos.1 and 2.

...

CORAM : S. G. CHAPALGAONKAR, J.
DATED : 18th APRIL, 2024.

JUDGMENT:-

1. The appellant/original respondent no.2-Insurer filed this appeal under Section 173 of the Motor Vehicle Act, impugning the judgment and award dated 17.07.2013 passed by the Motor Accident Claim Tribunal, Majalgaon in M.A.C.P. No.7/2010.

2. Mr. Deshpande, learned Advocate appearing for the appellant submits that respondent nos.1 and 2/original claimants had filed M.A.C.P. No.7/2010 before the Tribunal at Majalgaon under Section 166 of the Motor Vehicle Act, raising claim for

compensation of Rs.1,50,000/- towards accidental death of their son namely Akash. He would submit that late Akash was aged about 14 years. At the time of accident, he was traveling in Ape Rickshaw bearing Registration No.MH-23-M-1272. Although, the said rickshaw was registered and insured as passenger carrying commercial vehicle, it was loaded with goods i.e. cotton bales. He would, therefore, submit that the use of vehicle was contrary to the permit. Mr. Deshpande, learned Advocate would further submit that the driver of the insured vehicle was not holding valid and effective driving license. The owner of the vehicle was noticed for production of driving license. Even Tribunal had issued similar direction vide order passed below Exhibit-49 which is not complied by him. Consequently, the Tribunal rightly accepted the defence of the Insurance Company on the point of breach of condition of the policy and exonerated the Insurer from the liability to pay the compensation. However, while doing so the appellant-Insurer is directed to satisfy the award of Rs.2,00,000/- alongwith interest @ 9% per annum with liberty to recover the compensation amount, so paid, from respondent no.3 owner of the vehicle. He would, therefore, urge that in fact considering the nature of defence, the Tribunal ought to have completely exonerated the insurer from liability to pay the compensation. Mr. Deshpande, learned Advocate would further submit that at least the Tribunal could have passed the order directing payment of security and attachment of the vehicle before the release of compensation amount. He would rely upon the directions issued by the Supreme Court in the matters of ***Oriental Insurance Co. Ltd vs Shri Nanjappan and Ors***[1] and ***S. Iyyapan vs M/S United India Insurance Co.Ld.& Anr***[2] and urge that Tribunal ought to have followed same course.

1 **(2004) 13 SCC 224.**
2 **AIR 2013 SC 2262.**

3. Having considered the submissions advanced on behalf of the respective parties and after going through the pleading and evidence on record of the Tribunal, it is apparent that the defence as raised by the insurer has been accepted and the insurer has been exonerated. However, further directions have been issued to insurer to satisfy the award at the first instance and recover the compensation amount from owner of the vehicle. Although, insurer has challenged the award in this appeal, the compensation amount was deposited pursuance to directions given by this Court and same has been already disbursed to the claimants on furnishing undertaking.

4. In the context of the aforesaid factual position, it can be gathered that the insurer had raised twofold defence before the Tribunal. Firstly, the driver was not holding valid and effective driving license, secondly, the passenger carrying commercial vehicle was used for carriage of goods in contravention of permit. The deceased was traveling as a passenger in insured vehicle. Admittedly, vehicle in question was registered and insured as passenger carrying vehicle. The transportation of the deceased as passenger in the said vehicle was absolutely legal and proper. Even the insurer would be statutorily bound to cover the risk of the passenger carried in such a vehicle. There is no dispute on this factual and legal aspect. Therefore, the defence of the insurer would fall in category of breach of specified term and condition of policy as per section 149(2) of the Motor Vehicle Act, which entails insurer to avoid liability to satisfy the award, under the scheme of the Motor Vehicle Act.

5. It is trite that merely because the insurer has established its defence of breach of policy in terms of Section 149(2) of the Motor

Vehicle Act, the insurer cannot be completely exonerated and directions to satisfy the award with recovery rights can be certainly issued. Even the judgment in case of ***S. Iyyapan*** (Supra) as relied on behalf the appellant lays down similar preposition of law.

6. In that view of the matter, the directions given by the Tribunal against the insurer to satisfy the award at first instance and then recover the amount from the owner of the vehicle cannot be faulted. In the present case, the compensation amount deposited by the appellant-Insurer in this appeal is already disbursed to the claimants as per order dated 29.04.2016 passed in Civil Application No.5813/2016. Therefore, now it would be open for the insurer to avail its remedy as per directions appearing in Clause No.III of the operative part of the impugned judgment of the Tribunal.

7. Resultantly, First Appeal sans merit, hence, dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/April-2024