

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.425 OF 2008

United India Insurance Co. Ltd. } Having Its Thane Divisional Office at Shelar } Building, 2 nd Floor, Gokhale Road, } Naupada, Thane (West)-400 602 }	...Appellant
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Versus

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SANTOSH
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1. Muzaffar Hussain Abbasali Kadri } Age-68 years, } } 2. Zinnatbibi Muzaffarhussain Kadari } Age-62 years, } } (Since both the Applicants died during the } pendency of trial, through their heirs and } Lrs) } } 1/1 Asafathussain Muzaffar Hussain Kadri } (R/Nos.1 to 5 Age-49 years, Occ: Service } Org. Claimants) } 1/2 Mohsinhussain Muzaffarhussain Kadri } Age-47 years, Occ: Serevice } } 1/3 Zahid Hussain Muzaffarhussain Kadri } Age-45 years, Occ: Service } } All R/at C/o. Respondent No.1. } 3. Manisha Sadikhussain Kadri } Age-20 years, Student }	
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4. **Sabana Sadikhussain Kadri** }
 Age-17 years, Student (Now Major) }
 }
5. **Mr.Sahel Sadikhussain Kadari** }
 Now : Major, Student }
 }
- All R/at “Sadab Cottage”, 1, Rasalabad }
 Society, Near Shah -Alam Roza, }
 Ahmedabad-380 028 }
6. **M/s. N.N. Travels** } (R. No.6 Org.
 Summons to be served on its owner, Opp. } Respondent)
 Shah-alam Roza, Ahmedabad-380 028. }Respondents

Ms.Poonam Mital, for the Appellant.
 Mr.Rahul Singh a/w Mr.Yash Naik, Arbaaz Shaikh i/b Mr.Rajesh
 P. Behere, for Respondent Nos.3 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY 2024

ORAL JUDGMENT :-

1. The issues involved in this Appeal is offending bus had no permit to ply in Maharashtra.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the offending bus was registered in Gujarat and it had come in Maharashtra for sightseeing. The said bus did not have the permit to ply in

Maharashtra and accident occurred in Maharashtra. The witnesses were examined to prove the said fact, but Tribunal has not considered evidence produced on record. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, out of the same accident some Claim Petitions were filed and in the said Petitions were allowed by the Tribunal, but those order's have not been challenged by the Appellant-Insurance Company, so Appellant-Insurance Company cannot take one stand in some matters and different stand in other matter. The learned counsel further submitted that, the Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. Hence requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Thane.

5. While dealing with the issue of permit, the Tribunal has observed that, the issue of breach of Terms and Conditions of

the Policy has discussed in detail in paragraph No.7 of the common judgment delivered on 16th October 2003 and there is no challenge to the said finding. The Tribunal has further observed that, the evidence given by Shri.Haresh Krishna Sonavane in MACP No.65 of 1995, which is adopted in this Petition, will be of no help to the Insurer. Therefore, the Tribunal has held that the Insurer is liable to pay compensation to the Claimants. I do not find infirmity in it. It appears from record that out of the same accident other Claim Petitions were allowed but the finding's of the Tribunal in those Claim Petitions has been challenged by the Appellant-Insurance Company. If it so the Appellant-Insurance Company can not adopt pick and choose policy.

6. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith interest thereon.
- (iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to

withdraw it, as per Rules.

(iv) The learned counsel for the Appellant undertakes to file Vakalatnama.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)