IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1556 OF 2019

National Insurance Co. Ltd.]
Jai Commercial Complex, J. K. Gram]
Near Cadbury Company]
Eastern Express Highway, Thane]
Policy No. 253501/31/08/6100002470] Appellant

Versus

1. John K. Mathew]
   Age 39 years,]
   R/at : Amit Co-op. Housing Society, 104,]
   Sector – 8E, Kalamboli, Navi Mumbai – 410208]
   ]
2. Essdee Foundations & Constructions Pvt. Ltd.]
   1004, Mayures Cosmos, Sector 11,]
   CBD Belapur, Navi Mumbai, Dist. Thane.]
   (Owner of vehicle No.MH-04-AS-4614)] Respondents

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Mr. R.S. Vidyarthi a/w. Mohit Turakia i/b. Asim Vidyarthi, Advocate for Appellant.
Mr. T. J. Mendon , Advocate for Respondent No.1.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 23rd JANUARY, 2024.

JUDGMENT :

1. The issue involved in this appeal is, the claimant cannot be termed as third party as he was travelling in the offending vehicle as an employee.

2. It is contention of learned counsel for the appellant that the claimant was employee, who was travelling in his office car. When claimant was travelling as an employee during the course of his

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employment, he cannot be termed as a third party, but this fact is not considered by the Tribunal, hence requested to allow the appeal.

3. It is contention of learned counsel for Respondent No.1/ claimant that the claimant was occupant in the car and the issue raised before this Court by the appellant was not pleaded in the written statement. Learned counsel further submitted that the insurance policy of the offending car was comprehensive policy. It includes the occupants of the car. The Tribunal has considered all the aspects while passing Judgment and Order and no interference is required in it. Learned counsel further submits that no evidence was led before the Tribunal by the appellant to prove the defence taken by them.

Learned counsel for respondent No.1 has relied on:

(a) Oriental Insurance Co. Ltd. Vs. Santosh Satish Kumar Garg and others (2010 ACJ 2477)

(b) Royal Sundaram Alliance Insurance Co. Ltd. Vs. Meenakshi and others (2010 ACJ 2477)

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Thane (for short "**the Tribunal**").

5. It is contention of learned counsel for the appellant that the claimant (employee) who was traveling in the vehicle of employer cannot be termed as a third party. In my view, the policy of the offending vehicle was a comprehensive policy. It includes payment of premium for the occupants of the said car. This policy does not differentiate between the employee and the occupants. The employee come under the term of occupant as insurance premium for the occupant was already paid by the owner of the vehicle. Moreover, the issue raised in appeal was not pleaded in written statement of the appellant filed before the Tribunal hence, I do not see merit in the contention that employee cannot be termed as a third party/occupant.

6. In view of the above, I pass the following Order:

ORDER

(i) The appeal is dismissed. No order as to cost.

(ii) The claimant is permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

(iv) The learned counsel for the appellant seeks stay of the Judgment and Order. The accident occurred in the year 2009, hence I am not inclined to grant stay.

7. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

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