IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1662 OF 2013

Dr. Subhash Singh
Residing at G-1, Anuradha, Pratap Nagar Co-op.
Housing Society, Plot No.120, Ashokbaug, Panvel,
District Raigad … Appellant

Versus

1 Shri Chandrashekhar Shidhalingayya Kamblinath
Age : 71 years

2 Smt. Savitri Chandrashekhar Kamblinath
Age : 65 years

3 Shri Vishwanath Chandrashekhar Kamblinath
Age : 43 years

4 Ms. Jyoti Chandrashekhar Kamblinath
Age : 37 years,
No. 1 to 4 residing at 105, Manjunath Nagar, Gokul
Raod, Hubali 580030, Karnataka State

5 The Oriental Insurance Co. Ltd.
Insuring Jeep No. MH-04-AA-202
Shivram Sadan, 2nd Floor, Shivaji Road, Line Ali,
Panvel, District Raigad

6 Shri D. Subramanyam
Residing at K. G. M. Road, Vikora, District Chiltur,
Andhra Pradesh

7 United India Insurance Co.
Insuring Truck No. AP-03-T-2286
Tapal Naka, Panvel, District Raigad … Respondents

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Mr. Sachin S. Punde, Advocate for the Appellant.
Mr. Sahil D. Salvi, Advocate for Respondent Nos. 1 to 4.
Ms. Poonam Mital, Advocate for Respondent No.5.
Mr. Amol Gatne, Advocate for Respondent No.7.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th APRIL, 2024

ORAL JUDGMENT :

1. The issue involved in this appeal is liability fixed on the Insurance Company.

2. It is contention of learned counsel for the appellant - owner of the offending vehicle that at the time of accident the offending vehicle was insured with respondent No.5/Insurance Company. The said policy was a comprehensive policy but the Tribunal has fixed liability of Rs.1,00,000/- only on the Insurance Company which is erroneous. Learned counsel further submitted that the Tribunal should have considered that the Insurance policy taken by the appellant was a comprehensive policy and the amount awarded as compensation should have been paid by the respondent No.5/Insurance Company, hence requested to allow the appeal. He relied on ***National Insurance Company Vs. Balakrishnan and Anr., 2013(1) SCC 731.***

3. It is the contention of learned counsel for the respondent No.5/ Insurance Company that the premium was not paid for the occupants of the jeep. The deceased was the gratuitous passenger in the said jeep, the policy shows that the premium was paid for driver and workman. The Tribunal has considered all the aspects while passing Judgment and Order, hence no interference is required in it.

She relied on ***Oriental Insurance Company Vs. Sudhakaran K.V.***

& Ors., (2008)7 SCC 428.

4. Learned counsel for respondent Nos. 1 to 4 submitted that the Tribunal has awarded compensation on lower side it be awarded. Learned counsel for Respondent No.7 submitted that appropriate order be passed.

5. I have all the learned counsels. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Raigad (for short "**the Tribunal**"). To prove its case, the claimant Dr. Subhash Singh has examined himself he has stated that at the time of accident the offending vehicle was insured with the Insurance Company. There is no cross examination to the witness by respondent No.5-Insurance Company that the policy was not comprehensive policy and insurance was only for limited purpose. The respondent No.5-Insurance Company have examined their officer Mr. M. S. Mane, Assistant Manager at Exhibit-104, he has stated that as per insurance policy, their company is liable to pay Rs.1,00,000/- if claimants have filed the claim within three months. He further stated that the deceased was a friend of owner of vehicle, being gratuitous passenger, their company is not liable to pay any amount to the claimants. In cross examination he has admitted that passenger's insurance was covered under the insurance policy. He volunteered that the insurance amount of policy is upto Rs.1,00,000/-. While dealing with the issue of payment of compensation, the Tribunal has observed that the insurance company is liable to pay Rs.1,00,000/- and remaining compensation amount of Rs.4,00,000/- shall be paid by the owner of the vehicle. I am unable to understand the observation of the Tribunal as the insurance policy which is at Exhibit-33 shows that it is a comprehensive policy and the total premium of Rs.10,021/- was paid as a premium. The witness examined by the Insurance Company. In his cross examination has admitted that the policy covers the passengers. In the policy it is not mentioned that the passengers are entitled for Rs.1,00,000/- compensation only. When the policy is a comprehensive policy and witness admits in cross examination that passenger's risk was covered under the policy, the Insurance company is liable to pay compensation. The Hon'ble Apex Court in the case of ***National Insurance Company Vs. Balakrishnan and Anr.*** *(supra)* has held that "comprehensive/package policy" would cover the liability of the insurer for payment of compensation for the occupant in a car, hence I hold that Insurance Company is liable to pay entire compensation as at the time of accident offending vehicle was insured with the respondent No.5-Insurance Company.

5.1. While awarding compensation the Tribunal has not awarded consortium amount. As per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are 4 claimants. Total comes to Rs.2,28,000/-, the claimants are entitled for this amount.

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

ORDER

- **i.** The appeal is allowed.
- **ii.** The respondent No.5/Insurance Company shall pay compensation amount fixed by the Tribunal and enhanced amount of Rs. 2,28,000/- to the claimants @7.5% interest p.a. from 1st November, 2017 till realisation of amount.
- **iii.** The Insurance Company shall deposit the enhanced amount along with interest within 8 weeks as fixed by the Tribunal.
- **iv.** The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- **v.** The statutory amount be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
- **vi.** The appellant is permitted to withdraw the deposited

amount along with interest if it is deposited.

7. All the appeals are disposed of. All pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)