



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

FIRST APPEAL NO. 2810 OF 2018

The New India Assurance Co. Ltd.,
Through its In-charge (Legal Hub),
D.O. No.1, Adalat Road, Aurangabad,
Ravikant Rajendra Yadav,
Age : 27 Years, Occ. Service,
R/o. Aurangabad.

..Appellant
(Org. Respondent No.3)

VERSUS

1. Ankush S/o Asaram Gaikwad,
Age : 49 Years, Occ. Private Service,
R/o. At Post Waluj, Tq. Gangapur,
Dist. Aurangabad at present
Residing at C/o Dnyaneshwar
Babasaheb Pawar, H. No.293,
S. No.64, Near S. T. Colony,
Aurangabad Dist. Aurangabad.
2. Shaikh Rafique S/o Shaikh Younus,
Age: Major, Occ. Driver,
R/o. House No.5-18-116/Part,
Rahul Nagar, Railway Station,
Aurangabad.
(Driver of Private Bus bearing
Registration No. MH-25-B-758)

3. Mahfooz Ahmed S/o Sayyed Ahmed,

Age : Major, Occ. Business,

R/o. Plot No. 44-B, Amrut Park,

Jalan Nagar, Near Railway Station,

Aurangabad.

(Owner of Private Bus bearing

Registration No. MH-25-B-758) .. Respondents

(R-1 Org. Claimant)

(R-2 & 3, Org. R-1 & 2)

....

Shri. S. R. Bodade, Advocate for the Appellant

Shri. D. B. Pawar, Advocate for Respondent No.1

Shri. D. S. Kulkarni, Advocate for Respondent Nos.2 & 3 (Absent)

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 31st JANUARY, 2025

PRONOUNCED ON : 10th FEBRUARY, 2025

JUDGMENT :-

1. The appellant/Insurance Company, who is original respondent No.3 has filed this appeal to challenge Judgment and award dated 30.11.2016, passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad (hereinafter referred to as 'the learned Tribunal') in M.A.C.P. No. 236 of 2013. The learned Tribunal under the impugned judgment has granted compensation of Rs. 4,13,310/- inclusive of award under 'No Fault Liability' along with the interest at the rate of 9% per annum from the date of petition till its realization. The appellant/Insurance Company has filed this appeal mainly on

two grounds, that it was not liable for paying compensation as the offending bus was being driven without permit and that the injured had also contributed in the accident.

2. According to the respondent/claimant, he was riding on motorcycle alongwith his wife Heerabai on 16.03.2012. At about 19.30 hours, his motor-cycle bearing registration No. MH-20-BD-3710 had reached near T.C.I. Company at Waluj. At that time, one private Bus bearing registration No. MH-25-B-758 came from Pandharpur side without following the traffic rules and also in a high speed and gave dash to his motorcycle. As such, he sustained injury, and therefore, filed the aforesaid claim petition. The learned Tribunal granted the compensation as aforesaid and hence this appeal.

3. The appellant/Insurance Company as well as the learned counsel for the respondents/claimants filed their respective written notes of arguments. The learned counsel for the respondents/claimants supported the impugned judgment, whereas the appellant/Insurance Company challenged the same mainly on the following grounds :-

(I) *There was breach of policy condition as the offending bus was being driven without permit, and therefore, Insurance Company needs to be exonerated.*

(II) *No functional disability was determined by the learned Tribunal.*

(III) *The respondents/claimants had in fact contributed in the occurrence of accident.*

4. Heard rival submissions and also perused the documents along with the written notes of arguments.

5. The citations relied upon by the learned counsel for the appellant/Insurance Company, which are as follows, are also considered.

(I) **Hon'ble Apex Court in the case of Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd and others reported in [2018 ACJ 1768]**

(II) **Hon'ble Apex Court in the case of Oriental Insurance Co. Ltd. Vs. Narbheram Power and Steel Pvt. Ltd. [2018 ACJ 1777]**

(III) **In the High Court of Madras in the case of S. Kavitha and others Versus Annamalai Enterprises and another reported in [2023 ACJ 1948]**

(IV) **In the High Court of Kerala in Pareed Pillai Versus Oriental Insurance Co. Ltd reported in [2019(2) T.A.C. 499 (Ker.)F.B.]**

(V) **Gohar Mohammed Versus Uttar Pradesh State Road
Transport Corporation & Others (2023) ALL SCR
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6. So far as the first ground of challenge is concerned, the appellant/Insurance Company is saying that the offending Bus was being driven without permit, and therefore, Insurance Company needs to be exonerated from liability of paying compensation due to breach of policy condition. It is significant to note that, to bring on record the fact that the Bus was being driven without permit, the appellant/Insurance Company had examined one clerk from R.T.O. Office, Aurangabad namely Milind Sasane. He had brought particulars of the offending bus available in his office. However, according to him, the R.T.O. Office, Aurangabad had already issued NOC to Dy. RTO, Shrirampur in respect of the said offending Bus. As such, according to this witness, there was no record available in his office in respect of permit of the offending Bus. As such, he was unable to say conclusively whether the offending Bus was being driven without permit. It is extremely important to note that, when this witness had stated that NOC was issued by his office to the Deputy Regional Transport Office, Shrirampur, then it was the responsibility of appellant/Insurance Company to call any

person from the Regional Transport Office, Shrirampur to establish the fact beyond doubt that the offending bus was not having permit at the time of accident. No such effort appears to have taken by the appellant/Insurance Company. As such, there is no force left in the first ground of challenge raised by the appellant/Insurance Company.

7. Secondly, the learned counsel for the appellant/Insurance Company raised the objection that the learned Tribunal had held percentage of permanent disability of the respondent/claimant to higher side without determining the functional disability. However, the medical evidence on record clearly indicates that there was shortening of leg of the claimant resulted into sustaining 35% of permanent disability. It is important to note that the respondent/claimant is self-employed person and therefore, considering injuries sustained by him and nature of physical disability, his functional disability could have been proved much more than the permanent disability of 35%. However, the learned Tribunal has considered only physical permanent disability of the respondent/claimant. As such, it appears reasonable that the learned Tribunal considered only that much permanent disability for computation of compensation. Further, the income of the respondent/claimant is also taken as notional

income which is appropriate as per the standard of minimum wages fixed by the Government of Maharashtra. Thus, the second ground of challenge is also not having any force.

8. So far as the third ground of challenge is concerned, the appellant/Insurance Company is claiming that there was contributory negligence on the part of respondent/claimant. However, on going through police paper, it is clearly evident that, the investigating officer, after due investigation, found that the driver of offending bus only was responsible for the accident and therefore, charge sheet was filed only against him. Even the *panchnama* of the spot of accident supports the contention of respondent/claimant that the offending bus had in fact given dash to him which was being driven in a high speed and rash and negligent manner. It is significant to note that the appellant/Insurance Company had also not examined any witness who could have established the negligence of the respondent/claimant. As such, the judgment and award passed by the learned Tribunal appears reasonable and needs no interference.

9. The learned counsel for the appellant/Insurance Company relied on the judgment of **Amrit Paul Singh and another Vs. Tata AIG General Insurance Co. Ltd and**

others (supra) wherein the insurer was exonerated as the insured did not prove that his vehicle was having permit at the time of accident. However, in the instant case, driver and owner of the offending bus have not led any evidence, and therefore, it was incumbent upon the appellant/Insurance Company to bring such record from Deputy Regional Transport Office Shrirampur. The insurance company has miserably failed to adduce the valuable piece of evidence.

10. Secondly, the appellant/Insurance Company relied on the judgment in the case of **S. Kavitha and others Vs. Annamalai Enterprises and another (supra)** wherein 10% contributory negligence was held on the part of motorcyclist for not wearing a Helmet. However, in this case, the investigating machinery after due investigation had already observed that driver of offending bus was at fault. The appellant/Insurance company also relied on the judgment of **Parred Pillai Versus Oriental Insurance Company Ltd** (supra) wherein absence of valid permit and fitness certificate of a transport vehicle is held as fundamental breach and therefore, it being not a technical breach of policy, Insurance Company is entitled to recover the compensation from the insured. However, it is already held by this Court that the appellant/Insurance Company has failed to adduce satisfactory evidence in respect of absence of valid

permit. Thus, all these citations relied upon by the appellant/Insurance Company, are not at all helpful.

11. Thus, considering all these aspects, no substance is found in the appeal and accordingly it stands dismissed.

(SANDIPKUMAR C. MORE, J.)

Y.S. Kulkarni