IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1633 OF 2024

The Branch Manager
Bajaj Allianz General Insurance Company Ltd.
First Floor, Tower No.01, Common Zone,
Samrat Ashok Path, Yerwada, Pune 411 006.
Through its Authorized Signatory / Branch Manager,
Plot No. D-5/1, ABC East, 3rd Floor,
Besides Prozone Mall, Chikhalthana MIDC,
Aurangabad.Tq .&Dist :Aurangabad, Pin Code: 431 210.
…APPELLANT
(Org. Respondent No.2)

VERSUS

01) Swati Krushna Digurkar
Age :34 Years, Occu. Household

02) Ajinkya Krushna Digurkar
Age :19 Years, Occu. Education

03) Pranav Krushna Digurkar
Age :17Years, Occu. Education
(Being minor under guardianship of
RespondentNo.01)

04) Shriram Dinkarrao Digurkar
Age :69 Years, Occu. Nil,9

05) Radha Shriram Digurkar
Age :67Years, Occu. Nil,
All R/o. Plot No. 05, Gut No 27,
Shilpnagar, SataraParisar, Aurangabad,
Tq. &Dist. Aurangabad.
At Present R/o. Ward No.07, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

06) M/s Kamdhenu Pickles & Spices Pvt. Ltd.
1379, KrushiBhavan, BhavaniPeth,
Vitthal Wadi Road, Pune – 411 042.
And
M/s Kamdhenu Pickles & Spices Pvt. Ltd.
Gut No. 53, Survey No.07, Wadgaon Maval,

Pune.
07) Shri Gorakh Hiraman Sakat,
Age 45 years, Occ. Driver,
R/o. Anandnagar, Sastewadi,
Baramati, TalukaBaramati,
District : Pune

..RESPONDENTS
(Orig. Respondent Nos.01 to 05 – Orig. Claimants
Respondent No.06 - Orig. Respondent No.01)

Mr. Mohit R. Deshmukh, Advocate for appellants.
Mr. Vishal Badakh, Advocat for respondent Nos. 1 to 5.
Mr. S.Y. Mahajan, Advocate for respondent No.6

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 18th FEBRUARY, 2025.

JUDGMENT :-

1] Heard learned advocates appearing for the parties.

2] The appellant/insurer impugns the judgment and award dated 6.7.2023 passed by the Motor Accidents Claims Tribunal, Shrirampur, in M.A.C.P. No. 225 of 2019.

3] The respondent/claimant instituted the claim petition seeking compensation under Section 166 of the Motor Vehicles Act against owner, driver and insurer of the vehicle i.e. Eicher Tempo bearing registration No. MH-14/AS-9609, attributing negligence against its driver in cause of accident. The accident took place on 19.7.2019 when deceased Krushna Digurkar and his friend Madhukar Magre were traveling in a car bearing registration No. MH-14/DN 5039. It is alleged that due to the negligence on the part of the tempo driver, there was collision between the two vehicles, resulting into fatal injuries to the inmates of the car.

4] The appellant/insurer filed written statement contending that the tempo owner was not holding valid permit as on the date of the accident and as such, there is breach of condition of policy. In support of contention, insurer relied on judgment and award passed by the Tribunal (which is placed at Exhibit 82) in sister claim i.e. F.A. No. 594 of 2019 at Aurangabad) contested by the driver at Aurangabad,.

5] Mr. Deshmukh, learned advocate for appellant submits that although aforesaid evidence was placed on record in pursuance to the defence of breach of policy, learned Tribunal did not consider the same. He invites attention of this court to reasoning in para. 18 of the judgment, wherein, Tribunal observed that as per the record of the Transport Office at Pune, insured tempo was not having valid permit as on the date of accident.

6] Mr. Mahajan, learned advocate for the insured and owner of the vehicle, submits that, in fact, the Tribunal has not taken note of the composite negligence of driver of car involved in the accident. He submits that the evidence surfaced during the course of trial of the claim clearly indicate that two vehicles were involved in the accident and respective drivers are equally responsible in cause of accident.

7] Mr. Deshmukh, points out that owner and insurer of the another vehicle is not party to the claim petition. Therefore, such submissions of Mr. Mahajan cannot be entertained in appeal. Pertinently, respondent/owner of Tempo has not filed any cross appeal or objection challenging the award. In this background, submissions advanced by Mr. Mahajan cannot be considered in appeal.

8] The record clearly indicates that the insured tempo was not bestowed with valid permit at the time of accident. The supreme court of India in the case of ***Amrut Mansing vs. Tata AIG General Insurance Co. reported in (2018) 7 SCC 558***, has reiterated that absence of permit is valid defence to the insurer under Section 149(2). In the present case, in the sister claim, Tribunal at Aurangabad has already recorded a finding of breach of policy. Even in present case Tribunal has recorded a finding that insured vehicle had no permit as on the date of accident. In that view of the matter, there was no reason to discard the defence raised by the insurer. The Tribunal failed to record plausible explanation for not considering defence of the insurer. As such, the finding will have to be recorded that insurer has successfully proved its defence on the point of breach of permit. However, absence of permit would not absolve the insurer completely from liability to satisfy the award at first place. Of course, insurer would be entitled to recover compensation amount from the owner of the vehicle in view of the finding of breach of policy. In the result, the appeal deserves to be partly allowed. Hence the following order :-

O R D E R

I] The first appeal is partly allowed;

II] The judgment and award passed by the Tribunal is modified as under :-

"1. Claim petition is partly allowed;

2. Respondent No.1/Owner of Tempo is held liable to pay compensation of Rs. 52,70,000/- to the claimants alongwith interest @ 6% p.a.;

3. The respondent/insurer shall satisfy award at first instance and then proceed to recover compensation from respondent No.1, as if dispute between owner of

the vehicle and insurer is decided under the present award."

III] Rest of the clauses of award passed by Tribunal shall apply mutatis-mutandis to modified award in this appeal.

IV] First appeal stands disposed of."

9] Since entire amount of compensation is already deposited by insurer with the Registry of this Court, same be disbursed in favour of the claimant Nos. 1 to 3 and 5.

10] The amount falling to the share of claimant No.4 be adjusted against the share of claimant Nos. 1 to 3 and 5.

[S.G. CHAPALGAONKAR, J]

grt/-