IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2114 OF 2007

Mahiboob Ladlesab Manura }
Age-49 years, Occ: Agriculture }
R/at Andewadi (BK), Taluka-Akkalkot, }
District-Solapur. } **...Appellant**

Versus

1. Dattatraya Ramchandra Kulkarni }
Age-42 years, Occ: Agriculture }
R/at Wadala, Taluka North Solapur, }
District-Solapur. }

2. Kisan Ram Dattu (Deleted) }
Age-36 years, Occ: Driver }
R/at Gawali Vasti, Solapur }

3. National Insurance Co. Ltd. }
Division Office, Solapur-174, }
South Kasba, Solapur } **...Respondents**

Mr.Kunal R. Kumbhat i/b Mrs.Sunanda R. Kumbhat, for the Appellant.
Ms.D. Shalini Shankar, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th JANUARY 2025

ORAL JUDGMENT :-

. The issue involved in this Appeal is pay and recover order passed by the Tribunal.

2. It is contention of the learned counsel for the Appellant that, the Appellant is owner of offending jeep. The said jeep was insured with the Respondent-Insurance Company. The Claimant was travelling in the said jeep for doing some transaction's. Due to rash and negligent driving of the driver the said jeep turned turtle and Respondent-Claimant got injured in it. He filed Claim Petition before the Tribunal. The Insurance Company in their written submission has taken defence that, at the time of the accident offending vehicle was insured with them, but the Appellant had given the said jeep on hire and reward basis. Hence, it was breach of Terms and Conditions of the Insurance Policy. On that ground, the Tribunal has passed pay and recover order, which is erroneous.

3. The learned counsel further submitted that, no evidence is produced on record to show that, the jeep was given on hire and reward basis. Moreover, policy of the jeep was comprehensive policy, it includes the Insurance of occupants of the jeep, but this fact is not considered by the Tribunal. Hence,

requested to allow the Appeal.

4. It is contention of learned counsel for the Respondent-Insurance Company that, the Appellant had given jeep on hire and reward basis. The Claimant was going in the said jeep for making some transaction. There was breach of Terms and Conditions of Insurance Policy. The Tribunal has passed well reasoned order. No interference is required in it and requested to dismiss the Appeal.

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

6. While passing the pay and recover order, the Tribunal has observed that, the Claimant and his friend were travelling in the jeep on hire and reward basis and there was breach of Terms and Condition of the Insurance Policy. On that ground, the Tribunal has passed pay and recover order. I am unable to understand the observations of the Tribunal as it has come on record that, the Appellant is owner of the vehicle and he was going in the said jeep with his friend's including Claimant for

doing some transaction. So it cannot be considered that the Claimant and other persons were fare paying passengers.

7. The Insurance Company has not led evidence to prove that, the Claimant and other occupants in the jeep were travelling as a fare paying passenger. Insurance Policy of the offending jeep produced on record alongwith Exhibit-67. It shows that, the policy was comprehensive policy. It includes insurance of occupants of the jeep. As it has not been proved before the Tribunal that, the Claimant and other persons traveling in the jeep were fare paying passenger or jeep was taken on hire and reward basis. Hence, I hold that, Insurance Company is liable to pay compensation and I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Respondent-Insurance Company shall pay compensation as fixed by the Tribunal along with interest on it, from the date of the filing Claim Petition till realization of the amount.

(iii) The Appellant is exonerated from paying compensation.

(iv) The Respondent-Insurance Company shall deposit compensation along with accrued interest within six weeks after receipt of this order, if not deposited.

(v) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.

(vi) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(vii) Record and Proceeding be sent back to the Tribunal.

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

(SHIVKUMAR DIGE, J.)