

(2015) 08 BOM CK 0004
In the Bombay High Court
Case No : First Appeal No. 509 of 2004

New India Assurance Company Ltd.

APPELLANT

Vs

Baby Nanda and Others

RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Citation : (2015) 4 ACC 602 : (2016) 1 ALLMR 623 : (2016) 2 MhLj 469

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.J. Pophaly, for the Appellant

Final Decision : Dismissed

Judgement

A.P. Bhangale, J—By this appeal, the appellant-Insurance Company has sought to challenge judgment and award dated 27.8.2002, passed by learned Member of the Motor Accident Claims Tribunal, Akola, in Motor Accident Claim Petition No. 113 of 1998, whereby the petition filed by the claimants legal representatives of deceased Devidas Salunke; was allowed holding that the driver/owner of the offending motor vehicle and insurance company shall jointly and severally deposit with the Tribunal amount of Rs. 2.00 Lacs towards compensation along with interest at the rate of nine percent per annum from the date of claim petition till realization of the amount.

2. The facts of the case in a nut shell are stated, thus :

That deceased Devidas Salunke, by profession, was "Cobbler" and an agricultural labourer, we well. He had gone to attend the marriage ceremony at village Kawatha from village Shirsoli, District Akola. On 1.6.1997 while deceased Devidas was returning back to his village Shirsoli by a motor vehicle Matadoor bearing Registration No. MH-28/9713, the accident occurred on Risod-Malegaon Road, Near Jamthi Phata within the local jurisdiction of Shripur Police Station, Sub Division, Washim due to rash and negligent driving by the driver of the said offending motor vehicle. The vehicle turned turtle and fell down below the bridge

at Jamthi Phata as a result of which Devidas suffered multiple injuries and died on the spot.

3. The incident was reported to the Shirpur Police Station and the Police had registered the crime as C.R. No. 71 of 1997. According to respondent No. 6 -Anis Ahamad Karimuddin/previous owner of the offending motor vehicle, he had transferred Matadoor bearing Registration No. MH-28/9713 to respondent No. 8 - Vipinkumar S/o Bharatlal Pete.

4. Shri A.J. Pophaly, learned counsel for the appellant -Insurance Company, submits that since the insured offending goods vehicle was used for carrying the passengers to attend the marriage, the Insurance Company is not liable to pay any compensation as it breaches the conditions of Policy and Permit of the vehicle. Whereas, owner of the offending motor vehicle, who resisted the claim, submits that the Insurance Company cannot absolve itself from indemnifying the owner of the vehicle.

5. Learned Member of the Motor Accident Claims Tribunal found that when the fatal accident occurred on 1.6.1997 at about 03:45 am on Risod Malegaon Road, Near Jamthi Phata, Devidas died as a result of the rash and negligent driving by the driver of the offending motor vehicle viz. Matadoor bearing Registration No. MH-28/9713. The offending motor vehicle previously owned by respondent No. 1 - Anis Ahamad Karimuddin was sold to respondent No. 8 -Vipinkumar Bharatlal Pete. The Tribunal, as regards liability of the appellant -Insurance Company, held that sum of Rs. 2.00 Lacs as determined just and proper compensation be paid by respondent Nos. 2 to 4, in the claim petition, jointly and severally together with interest at the rate of nine percent per annum from the date of claim petition till realization of the amount.

6. Learned Member of the Motor Accident Claims Tribunal while making reference to the rulings in the cases of New India Assurance Company vs. Satpal Singh and others, reported at 2000(1) All MR 346 (SC) and Ramesh Kumar vs. National Insurance Company Limited and others, reported at 2001(4) All MR 512 (SC) held that the Insurance Company is liable to pay the compensation to the owner of the goods, his representatives, and also gratuitous passengers travelling in the goods vehicle observing that such persons need to be treated as third party. It was further held that since deceased was gratuitous passenger in the goods vehicle, the Insurance Company is bound to pay the compensation. Learned Member of the Tribunal also observed that Insurance Company did not prove the breach of conditions of the Insurance Policy and distinguished the fact of driving vehicle without holding valid driving licence from the fact of carrying passengers or gratuitous persons in a goods vehicle while considering the ruling in the case of New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., (2001) ACJ 843 : AIR 2001 SC 1419 : (2001) 105 CompCas 398 : (2011) 1 CPJ 10 : (2001) 4 JT 235 : (2001) 3 SCALE 18 : (2001) 4 SCC 342 : (2001) 2 SCR 797 : (2001) 2 UJ 1121 : (2001) AIRSCW 1340 : (2001) 3 Supreme 84 .

7. Shri Pophaly, learned counsel for the appellant -Insurance Company, submits that the Insurance Policy does not cover the names of the passengers in a goods vehicle. He further submits that since the goods vehicle cannot be permitted to carry passengers, the insurer would not be liable to pay any compensation in view of the ruling in the case of Collector of C. Ex., Ahmedabad Vs. Cadila Laboratories (P) Ltd., (2002) 82 ECC 709 : (2002) 142 ELT 279 : (2003) 4 SCALE 6 : (2003) 2 SCC 222 .

In pursuance to above submissions, learned counsel for the respondent submits that the insurer is primarily liable to compensate the claimant/s of the victim of the vehicular accident. It is further submitted that if, according to the Insurance Company it is not liable to compensate claimant/s of the victim of the vehicular accident, the Insurance Company is at liberty to move the Tribunal under the Motor Vehicles Act, 1988 so as to recover the amount already paid to the claimant/s of the victim of the vehicular accident from the owner/driver of the offending motor vehicle.

8. Having heard the above submissions made on behalf of the rival parties and gone through the rulings cited (supra), I find that post 1988 i.e. after the amendment of Motor Vehicles Act, 1988 as contra distinguished from the Motor Vehicles Act, 1939 the object to compensate the victim of the motor vehicular accident adequately to restore his/her dependents back to the position as prior to the accident as far as possible.

9. Considering the view taken by the Motor Accident Claims Tribunal, Akola with reference to the rulings of the Apex Court, no interference is warranted in the judgment and award impugned in this first appeal. Hence, the first appeal is dismissed with costs.