(2013) 08 BOM CK 0167

In the Bombay High Court

Case No : First Appeal No. 396 of 2008

New India Assurance Company Ltd. — APPELLANT

Vs

Vishwanath and Others — RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2014) 2 ABR 657 : (2014) 2 ALLMR 260 : (2013) 6 MhLj 800

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

Bench : Single Bench

Advocate : A.J. Pophaly, for the Appellant; N.A. Padhye, Advocate for Respondents No. 1 to 3, for the Respondent

Final Decision : Disposed Off

Judgement

A.P. Bhangale, J.—The appeal is to challenge Judgment and Order in Claim Petition No. 37/1993 dated 20/6/2001 decided by learned Member, Motor Accident Claims Tribunal, Nagpur. Whereby after considering the evidence on record, learned Tribunal held the appellant as well as other respondents jointly and severally liable to pay the compensation. In Claim Petition No. 36/1993, Tribunal awarded compensation in the sum of Rs. 60,000/- to claimants inclusive of no fault liability. While in the Claim Petition No. 37/1993 compensation in the sum of Rs. 96,000/- was awarded payable jointly and severally by the respondents therein. Compensation was payable together with interest at the rate of Rs. 9% per annum from the date of claim petition till realization. It appears that facts pleaded in the appeal are not in dispute, but, it disputed liability of the insurer to pay compensation jointly and severally along with owner of the offending motor vehicle on the ground that owner of the goods carriage vehicle to be used by gratuitous passenger traveling in such vehicles. It is contended that Insurance Company cannot be held liable to pay compensation to the victim in the accident.

2. Learned Advocate on behalf of the respondents contended that the facts that accident had occurred arising out of rashness and negligence of the driver of the

offending motor vehicle is not in dispute. Considering that insurer can pay compensation and recover the same from the owner of the offending motor vehicle and/or driver as the case may be by making an appropriate application before the Tribunal when insurer disowned liability to pay compensation on the ground that there was breach of condition of the insurance contract and owner had committed the breach by allowing the gratuitous passengers carrying in the goods carriage without permit to carry such passengers in the goods vehicle.

Reference is made to the ruling in New India Assurance Co. Ltd. Vs. Asha Rani and Others, . Wherein Hon''ble Supreme Court considering the object of the Motor Vehicles Act and compulsory insurance cover required to be obtained by owner of the motor vehicle. After considering the legal position in this regard held that unless owner of the goods vehicle carrying passenger in the vehicle had paid premium for covering the risk of the passengers with requisite additional premium, there would be no liability of Insurance Company. The owner of the goods carriage vehicle need not take off any insurance policy. They would be deemed to have been covered under the policy where for no premium is required to be paid.

In a given case, although assuming that it was liability of owner of the offending vehicle to compensate victim of accident, who was traveling as passenger in a good carriage vehicle in which case insurer would have no liability. If insurer has paid compensation, insurer is at liberty to recover the same from the owner of the offending vehicle.

To support this submission, reference was also made to the ruling in Manager, National Insurance Company Ltd. Vs. Saju P. Paul and Another, . In concluding para no. 26, while considering that the amount was deposited by the Insurer, Hon''ble Supreme Court observed that claimant may be allowed to withdraw the amount deposited by the Insurance Company with accrued interest and the insurance Company may recover the amount so paid from the owner by following procedure as laid down by the Apex Court in the ruling of National Insurance Co. Ltd. Vs. Challa Bharathamma and Others, .

In view of this legal position following order is passed.

ORDER

1] The present appeal stands disposed of accordingly with liberty to the insurance Company to recover the amount from the owner of the offending vehicle by filing an appropriate proceeding in Motor Accident Claims Tribunal, Nagpur.

2] The amount deposited in this court be transferred to the Tribunal for disbursement and pass appropriate order as it may deem fit according to law.

3] Record and Proceedings be sent back to Motor Accident Claims Tribunal, Nagpur.