

**(2008) 03 BOM CK 0031**  
**In the Bombay High Court**  
**Case No : First Appeal No. 201 of 1997**

|                                          |    |            |
|------------------------------------------|----|------------|
| Oriental Insurance Co. Ltd.              | Vs | APPELLANT  |
| Chhaya Satish Sontakke (Jain) and Others |    | RESPONDENT |

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**Date of Decision :** 11-03-2008

**Acts Referred:**

**Citation :** (2008) 4 ALLMR 654 : (2008) 5 MhLj 64

**Hon'ble Judges :** C.L. Pangarkar, J

**Bench :** Single Bench

**Advocate :** P.G. Pathak, for the Appellant; Maharashtra State Road Transport Corporation, for the Respondent

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## Judgement

C.L. Pangarkar, J.—This is an appeal by original non-applicant No. 2 - the Oriental Insurance Company.

2. The facts giving rise to this appeal are as under--

Claimants are the widow, son and mother of deceased Satish. It is alleged that on 12-11-1993, the deceased was travelling by a Jeep bearing No. MH-30-271. He was to go to Khamgaon. The said jeep was being driven by non-applicant No. 1, who is the owner of the said Jeep. While jeep was proceeding towards Khamgaon, S.T. bus came from the opposite direction and there was a collision between the two vehicles. It is alleged that both the vehicles were being driven rashly and negligently. Satish died in the said accident. It is alleged that Satish was 24 years old when he died. He was running electronics shop and was dealing in electronic goods and T.V., V.C.R. etc. He was earning Rs. 5000/- per month. It is alleged that the deceased would have survived long. The claimants, therefore, claimed compensation of Rs. 10,00,000/-.

3. Non-applicant No. 1 did not contest the claim. N.A. No. 2 has filed a written statement and admitted that the vehicle was insured with it. The non- applicant denied the age of the deceased and his income. It is the contention of the non-applicant that the accident had taken place due to rash and negligent driving of

the S.T. bus. Further, it is contented that the owner/driver was using the vehicle in violation of the conditions of policy i.e. he was carrying passengers on payment of charges from one place to other. It is further contended that the vehicle was to be used only for social, domestic and pleasure purposes and since it was used for carrying passengers illegally, the non-applicant No. 2 is not liable to reimburse the owner.

4. Non-applicant No. 3 - State Transport Corporation has filed written statement and has denied all allegations as have been made by the claimants. It is the contention of the State Transport Corporation that the jeep was being driven by non-applicant No. 1 in a very rash and negligent manner. Jeep in fact gave a dash to the S.T. bus on the rear side since it was not under the control of the driver. There was no fault whatsoever on the part of the bus driver. Non-applicant No. 3, therefore, contended that the claim is liable to be dismissed against the State Transport Corporation.

5. The learned judge of the Tribunal framed issues and found that the total fault was that of the jeep driver. He awarded compensation of Rs. 1,70,000/- as against respondents No. 1 and 2 only and dismissed the claim against respondent No. 3. Being aggrieved by that judgment and decree, N. A. No. 2 has preferred this appeal. The claimants have not preferred any cross-objection or cross appeal.

6. I have heard the learned Counsel for the appellant and the respondents.

7. The following points arise for my consideration--

#### REASONS

8. Learned Counsel for the appellant - Insurance Company raised two contentions before me. First, that the accident took place due to the negligence of the driver of both vehicles and not due to the sole negligence of jeep driver as is held by the Tribunal, and the second contention is that gratuitous passengers are not covered by the Policy of Insurance and therefore, there is no liability of the Insurance Company at all. The learned Counsel for the appellant further contended that there was a collision between the two vehicles and therefore, it could be said that both were at fault. PW2 Sureshchandra was an eye witness. It is admitted by the witness in cross-examination that when the bus was coming from front side, major portion of the bus was to the left side. He also admits that bus driver reduced the speed and swerved the bus to the extreme left on seeing jeep coming at high speed. This evidence of PW 2 Sureshchandra clearly shows that the bus was to the extreme left side of the road. Further, the witness admits that the bus gave dash to the rear side of the jeep and after giving dash, the jeep went 90 ft. ahead and rammed into a tree. The fact that even after giving dash to the bus, the jeep went 90 ft. ahead and halted only after hitting the tree clearly indicates excessive speed as well as recklessness. It also clearly indicates that the vehicle was not under the control of the driver at all. Further, the fact that it hit the rear portion of the bus shows that the jeep driver did not even care

to take the jeep to his left side and avoid collision. The driver of the bus is examined by the State Transport Corporation. He states that he had taken his bus to the extreme left side and had halted the bus and jeep gave dash to the rear side of the bus. This evidence of the bus driver is not rebutted by the jeep driver. The learned judge, therefore, to my mind, rightly found that the entire fault was that of the jeep driver.

9. The non-applicant No. 1 is the owner and driver of the jeep. It is the case of the claimants that deceased was travelling in the jeep for going to Khamgaon from Chikhli. PW 2 Sureshchandra stated in the cross-examination that he was along with the deceased in the jeep. He also states that he does not know who is the owner. It is in his evidence that Satish told him that the owner was known to him and there was no question of payment of fare. There is no evidence that any fare was paid by either of these two persons to the owner. It is thus clear that the deceased was certainly travelling as a gratuitous passenger. The registration certificate (Exh.34) shows that the jeep was registered as a private vehicle and not as a public transport. For this reason also, it could be said that the deceased travelling as a gratuitous passenger.

10. The Insurance Company has placed on record the policy of insurance. It shows that insured had taken a comprehensive insurance and had paid a premium of Rs. 225/- for the nine passengers. A separate premium was paid for the driver. It was contended on behalf of the appellant that the liability of the Insurance Company under the conditions of Policy is only Rs. 50,000/-. My attention was invited to I.M.T.5 in the policy. In case of death the scale of compensation is hundred per cent. The learned Counsel for the appellant placed before me the India Motor Tariff, which shows that in case of death the premium per person in capital sum insured of Rs. 10,000/-, is Rs. 5/-. In this case, a premium of Rs. 25/- per each person has been paid. Obviously, the liability of the Insurance Company cannot exceed Rs. 50,000/-, since the passenger risk covered under the policy of Insurance is to the extent of Rs. 50,000/-.

11. It was contended on behalf of the learned Counsel for the appellant further that the claimants be directed to refund the balance of the amount. The submission cannot be accepted in view of the decision of the Supreme Court reported in National Insurance Co. Ltd. Vs. Baljit Kaur and Others, . In this decision the Supreme Court has held that the Insurance Company will have to first reimburse the claimants and then it may recover the same from the insured. In view of this, the appeal must partly succeed. Hence, the following order.

12. The appeal is partly allowed.

13. The liability of the Insurance Company is restricted to Rs. 50,000/- (Rupees fifty thousand only) only and interest thereon at the rate of 12% p.a. as directed by the Tribunal. Appellant/Insurance Company may recover a sum of Rs. 1,20,000/- together with interest at 12 per cent per annum from N.A. No. 1 i.e. Rajesh Shridharrao Raut (Rathod). No order as to costs.