MHWR010020842023

<u>Order below Exh.14 in</u>
<u>MACP No.90/2023</u>
<u>Bhanudas Gedam and one ..Vs.. Abhay Ghodkhande and one</u>

This application has been filed by respondent No.2 for rejection of the claim petition under Order VII, Rule 11 and for deleting it from the claim petition under Order-I, Rule-10 of the Code of Civil Procedure, for want of cause of action.

2. It is stated by respondent No.2 that the deceased was one of the passengers in the Car having registration No. MH-31-CM-6182, of which the accident occurred. Respondent No.1 is the owner of the above numbered car. Respondent No.1 while entering into the contract of insurance has paid premium only towards Own Damage claim, Third Party Liability and Personal Accident of Owner/Driver. He has not paid premium for covering the risk of personal accident of paid driver, and therefore, the risk of the deceased is not covered under the contract of insurance. According to it, there is no cause of action to file the present petition against it. On this ground, it prayed for rejection of the claim or deleting it from the petition.

3. The claimants resisted the application by filing reply (Exh.17). They denied about there being no privity of contract between deceased Sanjay and non-applicant No.2. They stated that premium of Rs.534.82 was paid towards the legal liability of the paid driver, as per the insurance policy. The insurance policy covering risk of driver was valid from 25.02.2023 to 24.02.2024. The accident occurred on 25.11.2023 and as such the insurance policy was in force on that day. As the claim petition has been filed under Section 164 of The Motor Vehicles Act, non-applicant No.2 cannot be exonerated from its liability. The issue raised by non-applicant No.2 is a matter of evidence and it can

not be determined at this stage. They denied all the adverse allegations against him. They stated that there is cause of action against respondent No.2 to file the claim petition. They, therefore prayed for the rejection of the application.

4. The points for determination and my findings thereon are as under :-

	POINTS		**FINDINGS**
1]	Whether the petition discloses a cause of action to file the claim petition against respondent No.2 ?	:	Yes
2]	Whether the claim petition is maintainable against respondent No.2 ?	:	Yes
3]	Whether respondent No.2 is the necessary and proper party to the claim petition ?		Yes
4]	Whether the petition is liable to be rejected under Order-VII Rule-11 and whether respondent No.2 is liable to be deleted from the claim under Order-I, Rule-10 of the Code of Civil Procedure ?	:	No
5]	What order?	:	The application is rejected.

REASONS

AS TO POINTS NO. 1 TO 4 :-

5. The material on these points is common and interconnected. Therefore, they are being considered together.

6. Heard both sides. It is a settled principle of law that the question, whether there is cause of action or not to file a claim petition has to be ascertained from the pleadings in the petition. In the petition, the claimants have specifically asserted that the deceased was driving the

above numbered car, which met with an accident and it was owned by respondent No.1 and insured with respondent No.2. It is the contention of respondent No.2 that no premium has been paid to cover the liability of the paid driver of the above numbered car. On the other hand, according to the claimants when there is a package/comprehensive insurance policy, the risk of paid driver is covered and said issue cannot be decided at this stage.

7. The learned advocate orally relied upon the case of Yashpal Luthra and Others ..Vs.. United India Insurance Co. Ltd. and Others, decided on 17.12.2009 in MAC No.176/2009, by the Hon'ble New Delhi High Court, wherein, the Hon'ble High Court was pleased to set aside contrary finding of the Tribunal, exonerating the Insurance Company. It held as under :

"*The IRDA issued circular dated 16th November, 2009 and convened a meeting of all the Insurance Companies on 26th October, 2009 when all the Insurance Companies admitted their liability in respect of a pillion rider on a two wheeler and occupants in a private car under the package/comprehensive policy. IRDA has also issued a circular dated 3rd December, 2009 to all the Insurance Companies to implement the circular dated 16th November, 2009 within a fixed time frame. The detailed judgment in this regard has been passed by this court on 9th December, 2009."*

8. In the Order of 9th December, 2009 the Hon'ble High Court has held as under :

"In view of the aforesaid, it is clear that the comprehensive/ package policy of a two wheeler covers a pillion rider and comprehensive/package policy of a private car covers the occupants and where the vehicle is covered under a comprehensive/package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or injury of a pillion rider on a two-wheeler or the occupants in a private car. In fact, in view of the TAC s directives and those of the IRDA,

such a plea was not permissible and ought not to have been raised as, for instance, it was done in the present case."

9. Perusal of the insurance policy on record reveals that the premium has been duly paid towards Own Damage (OD) cover, Third Party Liability (TPL), and Personal Accident cover for the Owner/Driver. On the face of it, this indicates that the policy in question is a comprehensive or package insurance policy. According to the claimants, the deceased stepped into the shoes of owner, as he was driver of the above numbered car and as such the claim petition is maintainable against Respondent No.2, i.e., the Insurance Company, which is under a statutory and contractual obligation to indemnify and compensate owner/driver, in accordance with the terms of the policy and applicable legal provisions. Whether the deceased would step into the shoes of owner-driver is a question/issue, which has to be decided after the parties lead evidence on merits and all the relevant provisions and rulings on that issue will have to be taken into consideration. The aforesaid ruling, circulars and the issue of pay and recover will also have to be considered in light of the evidence adduced by the parties.

10. In light of the rival contentions raised by both parties, it is evident that these are disputed questions of fact and law, which cannot be conclusively adjudicated at this preliminary stage. The determination of whether the deceased was covered under the policy and the extent of the insurer's liability requires adjudication on merits, which is only possible after both parties have been afforded the opportunity to lead evidence and bring relevant documents on record. Therefore, at this interlocutory stage, I do not find merit in the objection raised by Respondent No.2 seeking its deletion from the proceedings. The issues raised by Respondent No.2 go to the root of the matter and pertain to liability and coverage, which are matters for final adjudication after trial.

11. As a sequel to the above discussion, the petition prima-facie discloses a cause of action against Respondent No.2. Moreover, Respondent No.2 appears to be a necessary and proper party to the present proceedings, as the relief sought by the claimant may directly affect its rights and liabilities. I, therefore, answer points No.1 to 3 in the affirmative and point No.4 in the negative.

AS TO POINT NO. 5 :-

12. In view of my findings to points No.1 to 4, the application deserves to be rejected and is accordingly rejected. In the circumstances, parties to bear their own costs. In the result, in answer to point No.5, I pass the following order :-

ORDER

1] The application is rejected.

2] Parties to bear their own costs.

HEMANT BHAGWANTRAO GAIKWAD

Digitally signed by HEMANT BHAGWANTRAO GAIKWAD
Date: 2025.10.03 17:22:53 +0530

Date : 25.09.2025.

[H. B. Gaikwad]
Principal District Judge,
Wardha.