



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 FIRST APPEAL NO. 1309 OF 2006
WITH
CIVIL APPLICATION NO. 1312 OF 2023
WITH
CIVIL APPLICATION NO. 9456 OF 2019

The New India Insurance Co. Ltd

VERSUS

Gangadhar Lohaji Jhore Died Through L.Rs. Indubai Gangadhar
Jhore Died Through L.Rs. Meena Gangadhar Jhore and others

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Advocate for Appellant : Mr. Swapnil S. Rathi

Advocate for Respondent Nos. 2a, 2b and 3 : Mr. J.C. Badve

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CORAM : SANJAY A. DESHMUKH, J.

DATED : 31st JULY, 2026

PER COURT :-

1. This appeal is preferred by the Insurance Company against the judgment and award passed by the Ex-Officio Member, Motor Accident Claims Tribunal, Jalna in M.A.C.P. No. 68 of 2004, dated 16.07.2005.

2. The brief facts of the claimants' case are that the deceased, Rameshwar, was engaged by respondent No. 5, the owner of the tractor, as a labourer. On 21.04.2004, the tractor bearing registration No. MH-21-A-7201, carrying crushed stones (gitti), was proceeding towards village Rahiri. The trolley attached to the tractor turned turtle, causing Rameshwar to fall down. He was crushed under the stones

loaded in the trolley and died on the spot. Consequently, a crime came to be registered in connection with the said incident. Claimant Nos. 1 and 2 are the parents of the deceased Rameshwar, claimant No. 3 is his brother, and claimant No. 4 is his sister. According to the claimants, they were dependent upon the income of the deceased Rameshwar. Therefore, they filed the claim petition seeking compensation.

3. Respondent No. 3, the Insurance Company, contested the claim petition and admitted that the offending tractor was covered under a valid insurance policy. However, it denied the material averments made in the claim petition, particularly its liability to pay compensation. It was contended that the tractor was being used for carrying crushed stones (gitti), which amounted to commercial use and was contrary to the purpose for which the vehicle had been insured. According to the Insurance Company, such use constituted a breach of the terms and conditions of the insurance policy. Therefore, the Insurance Company contended that it was not liable to pay any compensation.

4. The learned Tribunal held that the Insurance Company is liable to pay the compensation and awarded compensation to the claimants of Rs.2,68,800/-.

5. The learned advocate for the appellant–Insurance Company submitted that the pleadings and the evidence adduced by the claimants clearly establish that Rameshwar was travelling while sitting in the trolley. It was further submitted that, although the trolley was insured, carrying Rameshwar in the trolley was in violation of the terms and conditions of the insurance policy, as he was not authorised to travel therein. Therefore, according to the appellant–Insurance Company, there was a breach of the policy conditions and, consequently, the Insurance Company is not liable to pay compensation.

6. The learned advocate for the appellant further relied upon the judgment of the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. v. Brij Mohan and others, AIR 2007 SC 1971***, wherein it was held that the Insurance Company was not liable to pay compensation. However, by exercising its extraordinary jurisdiction under Article 142 of the Constitution of India, the Hon'ble Supreme Court directed the Insurance Company to pay the compensation amount and recover the same from the owner of the vehicle. He further placed reliance on the judgment of this Court in ***United India Insurance Co. Ltd. v. Chandrakala Babasaheb Mane and others, rendered in First Appeal No. 1175 of 2005 and decided on***

07.09.2020, wherein, in paragraph 12, this Court held that a tractor registered for agricultural purposes cannot be used for non-agricultural purposes unless it is duly registered for such use. It was further held that, in the said case, the tractor was not registered for non-agricultural purposes and no additional premium had been paid to cover such use. This Court also observed that, since the deceased was travelling in the trolley, he could not be treated as a third party. He was neither the owner nor the driver of the tractor and, therefore, his risk was not covered under the insurance policy.

7. The learned advocate for the appellant invited attention to the impugned judgment, particularly the findings recorded in paragraph 14, wherein the Tribunal relied upon and considered the amendment made to Section 147 of the Motor Vehicles Act by the Amendment Act of 1994 and held that the scope of insurance coverage had been widened to include the owner of the goods or his authorized representative. He pointed out that the Tribunal concluded that, in the present case, the deceased was travelling in the trolley as a representative or an authorized person of the owner of the tractor, namely respondent No. 2. In support of his submissions, the learned advocate relied upon the judgment of the Hon'ble Supreme Court in ***New India Assurance Co. Ltd. v. Asha Rani and others, 2003 (1) TAC 1***, wherein it was held that, in the case of a goods vehicle, the

insurer is not liable to pay compensation in respect of the death or bodily injury caused to a passenger travelling in such vehicle, except to the owner of the goods or his authorized representative, as contemplated under Section 147 of the Motor Vehicles Act. He, therefore, submitted that the findings recorded by the Tribunal are contrary to the law laid down by the Hon'ble Supreme Court and, consequently, the impugned judgment and award deserves to be set aside.

8. The learned advocate for the respondents—claimants invited attention to the insurance policy (Exh. 35), particularly to the schedule of premium, which covers the risk of the driver, the owner and one employee under the Workmen's Compensation cover, for which an additional premium of Rs. 25/- had been paid. He, therefore, submitted that the deceased, Rameshwar, was an employee/workman of the insured and, consequently, his travelling in the trolley was covered under the terms of the policy. He further submitted that the tractor and trolley were being used for transporting crushed stones (gitti) excavated from a well, which activity was connected with agricultural operations and, therefore, constituted agricultural use. Accordingly, he contended that there is no merit in the grounds raised in the appeal.

9. The learned advocate for the claimants relied upon the judgment of the Hon'ble Supreme Court in ***Royal Sundaram Alliance Insurance Company Limited v. Honnamma and others (Smt.)***, **2025 AIR (SCW) 2641**, wherein it was held that the trolley attached to the tractor was being pulled by the tractor and that the trolley had turned turtle, resulting in the death of a person travelling therein. The Hon'ble Supreme Court further observed that it was not the case that the accident had occurred solely due to any defect or fault attributable to the trolley by itself. On the contrary, the accident had been caused by the tractor which was pulling the trolley. Accordingly, the Hon'ble Supreme Court found no infirmity in fastening the liability and in the determination of the quantum of compensation. Relying upon the aforesaid judgment, the learned advocate for the claimants submitted that the appeal is devoid of merit and deserves to be dismissed.

10. The learned advocate for the appellant has also invited attention to the deposition of claimant Indubai Jhore as well as the evidence of Sandesh Kamalakar, a witness examined on behalf of the Insurance Company, who deposed that the tractor and trolley insured with the Insurance Company were meant for agricultural purposes and that carrying crushed stones (gitti) in the trolley would not fall within the ambit of agricultural use. The terms and conditions

of the policy (Exh. 35) reveal that the risk of one employee was covered, for which an additional premium of Rs. 25/- had been paid. The admitted facts of the case disclose that Rameshwar was travelling in the trolley as a labourer when it turned turtle due to the rash and negligent driving of the tractor.

11. In the facts and circumstances of the case, particularly in view of the fact that the policy covered the risk of one employee, namely Rameshwar, the liability of the Insurance Company is required to be considered accordingly. As regards the purpose for which the tractor and trolley were being used, it is the case of the claimants that the same was being used for carrying crushed stones (gitti). However, neither the evidence adduced by the claimants nor that of the respondents establishes that the tractor and trolley were being used for any purpose other than agricultural purposes, namely, for commercial purposes. In such peculiar facts and circumstances, the law laid down by the Hon'ble Supreme Court in ***Oriental Insurance Company Ltd. v. Brij Mohan (supra)*** is not applicable to the present case. Further, in ***United India Assurance Company Ltd. v. Chandrakala Mane (supra)***, it has not been clarified in what capacity the deceased/injured person was travelling in the trolley. Moreover, in the said case, it was specifically held that the tractor and trolley were being used for a non-agricultural purpose, whereas

the insurance policy covered only agricultural use.

12. In the present case, there is no evidence on record to establish that the tractor and trolley were being used for any non-agricultural purpose in violation of the terms and conditions of the policy. Therefore, the aforesaid decision is not useful to the case of the appellant. Accordingly, there is no substance in the grounds raised in the appeal. The appeal, therefore, deserves to be dismissed.

13. As far as the quantum of the compensation is concerned, learned advocate for the respondents/claimants pointed out that the Tribunal has not awarded the compensation as per the provisions of law under the head of loss of future prospects and non pecuniary heads.

14. Learned advocate for the appellants strongly objected for increase of the compensation amount, as the appeal or the cross objection are not filed by the claimants.

15. The law is settled that in case even if the claimants have not preferred appeal or the cross objection and if it is pointed out that they are entitled for enhancement in compensation, that can be granted. From the impugned judgment it is found that 1/3rd amount

is deducted. However, one half amount deserves to be deducted. Further, multiplier 18 is applicable, as Rameshwar was 18 years old at the time of accident and multiplier 16 was applied. The income of deceased Rameshwar was held @ Rs.2100/- p.m.. If 50% amount is deducted towards his personal expenses, then the amount comes to Rs.1050/-. If that amount is multiplied by 12, then annual income comes to Rs.12,600/-. If it is multiplied by 18 then it comes to Rs.2,26,800/-, to which the claimants are entitled.

16. In addition to the above, the claimants are entitled to Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate, as the claimants were depending upon the income of the deceased and have lost their bread earner. They are further entitled to compensation for loss of consortium at Rs.40,000/- each, i.e. total Rs.80,000/- for two dependents/claimants. Accordingly, the claimants are entitled to an additional sum of Rs.1,10,000/- under the aforesaid conventional heads. Thus the claimants are entitled to Rs.3,36,800/- (Rs.2,26,800 + 1,10,000). Although the Tribunal awarded interest @ 9% p.a. having regard to the peculiar facts and circumstances of the case and the prevailing economic scenario, the rate of interest is modified to @ 7% p.a.

17. The appeal deserves to be dismissed with modification of

the impugned judgment and award. The impugned judgment and award is partly modified as under:-

O R D E R

- I. The appeal is dismissed.
- II. The impugned judgment and award is set aside the modified as under:-
 - a) The claimants are entitled to compensation amount of Rs.3,36,800/-, including the amount awarded by the Tribunal.
 - b) The appellant Insurance Company is directed to deposit the remaining amount within a period of 12 weeks from today alongwith the accrued interest @ 7% p.a. on the said amount.
 - c) The claimants are directed to pay the court fees on the enhanced amount of compensation.
 - d) The claimants are also entitled to withdraw the remaining amount lying in the Registry of this Court with accrued interest thereon.
 - e) On depositing the amount of compensation it be paid to the claimants' legal representatives i.e. claimant Nos. 2-a and 2-b equally.
- III. Pending civil applications are disposed of.

(SANJAY A. DESHMUKH, J.)