

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO.194 OF 2000

New India Assurance Company
Limited, having its Head
Office and registered Office
at New India Assurance
Building, 87, M.G. Marg, Fort,
Mumbai 1 and having Divisional
Office at Aurangabad

..Appellant

V E R S U S

- 1 Pama w/o. Vithal Magar, age 39
years, occ. Household and
agriculture, r/o. Khandala,
Tq. Vaijapur, Dist. Aurangabad
- 2 Alka d/o. Vithal Magar, age 14
years
- 3 Surekha d/o. Vithal Magar, age
12 years,
- 4 Sundar d/o. Vithal Magar, age
9 years,
- 5 Ganesh s/o. Vithal Magar, age
6 years,
- 6 Ramkishan s/o. Vithal Magar,
age 5 years,

7 Mohammad Issaq Mohd. Yakub,
age Major, occ. Tempo owner, ..Respondents
r/o. Khandala, Tq. Vaijapur,
District Aurangabad

Mr.D.S.Kulkarni, advocate i/b. Mr.S.L.
Kulkarni, advocate for appellant

Mr.M.D.Joshi, advocate for respondent nos.1
to 6

CORAM : M.T. JOSHI, J.
DATE : JANUARY 27, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to indemnify the owner of a light goods vehicle for the death of Vitthal, present appeal is preferred by original respondent no.3 - New India Insurance Company Limited.

3] The oral evidence along with other documentary evidence would show that the vehicle involved in the accident, bearing registration No.MH-20-A-

3632, a TATA make vehicle, was dashed by an unknown vehicle on 26th November, 1992 on Vaijapur to Aurangabad road. In the said accident, deceased – Vitthal has died. It was the case of respondent nos.1 to 6 that the deceased was working as Cleaner over the said goods vehicle. Therefore, the compensation at the rate of Rs.One lakh was claimed.

4] The main ground of defence of present appellant was that the deceased was traveling as a passenger in the goods vehicle and therefore, as there was breach of the terms and conditions of the policy of insurance, it is not liable to pay the compensation.

5] The witness of respondent nos.1 to 6 i.e. original claimants namely, Shamrao, driver of the vehicle, has admitted that the the deceased was

not working as Cleaner on the said goods vehicle at the time of accident and he had left said job before one year prior to the accident. Learned Member, therefore, held that the deceased was being carried as a passenger in the said goods vehicle, however, relying on the ratio in the case of **1993 TAC Vol II 644, New India Assurance Co. Ltd. and anr. Vs. Kamalbai and ors.**, it was observed that merely as the vehicle was carrying more passengers than the permit, the insurance company cannot be exonerated. Therefore, compensation was awarded from the present appellant – Insurance Company also.

6] Mr.Kulkarni, learned counsel for the appellant, submits that learned Member has misdirected himself in granting compensation. The issue was not as to whether, any passenger was permitted in goods vehicle, but it was as to

whether, any passenger can at all be carried in the goods vehicle against the conditions of the permit and the terms and conditions of the policy of insurance. He submits that the accident has occurred on 26th November, 1992. During the relevant period, even the owner of the goods vehicle was not permitted in the goods vehicle and the insurer was not statutorily liable to insure the risk of the said owner and therefore, he submits that the appeal may allowed.

7] Mr.Joshi, on the other hand, submits that the deceased was working as a Cleaner on the said vehicle and said vehicle was carrying more passengers than the permit and therefore, the appeal may be dismissed.

8] On the basis of this material, following point arises for my determination :-

Whether the appellant is liable to indemnify respondent no.7 – owner of the vehicle ?

. My answer to the above point is in negative therefore, the appeal is allowed for the reasons to follow.

R E A S O N S

9] Though respondent nos.1 to 6 – original claimants claimed that the deceased was working as Cleaner over the said goods vehicle, the driver of the said vehicle, who was examined by very same respondents, admitted in cross-examination that the deceased had left said job about one year prior to the accident. There was no issue as to whether, any passenger could have been carried in the goods vehicle. In that view of the matter, the finding of the learned Member does not survive.

10] The appeal is hereby allowed without any order as costs. The impugned judgment and order passed by learned Member, Motor Accident Claims Tribunal, Aurangabad, is quashed and set aside. The amount deposited by the appellant be refunded to the appellant after a period of sixty days from the date of this judgment.

[M.T. JOSHI, J.]

kbp