

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

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43 FIRST APPEAL NO. 334 OF 2003
WITH CA/2609/2003 IN FA/334/2003

NEW INDIA INSURANCE CO LTD
VERSUS

ASARAM MAROTI UBALE & ORS

WITH

FIRST APPEAL NO. 333 OF 2003
WITH CA/2604/2003 IN FA/333/2003

NEW INDIA INSURANCE CO LTD
VERSUS

SUKHDEO PUNDLIK WASH & ORS

...

Advocate for Appellants :Mr. S G Chapalgaonkar , Mr.
M. R. Deshmukh

Advocate for Respondent No.1 : Mr. S. K. Barlota
Advocate for Respondents 2 and 3 : Mr. A. D. Kasliwal

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CORAM : S. V. GANGAPURWALA, J.

DATE : 22nd September, 2015

PER COURT :

1. The present respondents/claimants had filed petitions under section 166 of the Motor Vehicles Act on account of injury sustained by them in an accident. The said petitions are partly allowed. Aggrieved thereby, the present appeals:

2. Mr. Chapalgaonkar, the learned counsel strenuously contends that the tribunal, while allowing

the claim petitions, has not considered the entire document in its correct perspective. The FIR, which is basic document, clearly states that these persons were waiting for the bus to go to their village. However, the driver of the vehicle- matador who was acquainted with these persons, stopped and they travelled through the said matador as passenger. This aspect has not been considered. In the petitions and thereafter, in the chief, theory has been developed to the extent that in the claimants were carrying luggage. Definition of goods as is enshrined in Section 2(3) of the Motor Vehicles Act excludes luggage from the definition of goods. In the chief, story was developed that they were carrying onion bags.

3. According to learned counsel, the owner of the goods, travelling with the goods in a goods vehicle would be protected only if hire charges are paid for the goods. According to learned counsel no such case is made out. The tribunal has committed error while allowing the claim petitions.

4. Mr. Barlota, learned counsel for the

respondents- claimants supports the judgment.

5. There cannot be dispute with the proposition that if a person travels in a goods vehicle alongwith luggage, the same would not be construed as a person travelling with the goods. It also needs to be considered that the totality of the evidence has to be weighed and considered. What was not stated in the chief has been brought in cross examination by the insurance company. A specific question was asked in the cross examination of the claimants as to the payment of hire charges, wherein it was specifically stated that Rs.10/- was paid for each onion bag. As such charges were paid for the goods. Onion bag could not be considered as luggage. It was goods and charges were paid for the goods.

6. It is also worth considering that person who had lodged FIR is not examined. Considering the totality of the evidence, the tribunal has arrived at plausible conclusion.

7. In light of above, the first appeals are

dismissed. Civil applications also stand disposed of.
No costs.

8. The amount deposited by the insurance company is
allowed to be withdrawn by the claimants.

(S. V. GANGAPURWALA, J.)

JPC