

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 303 OF 1998

The Oriental Insurance Co. Ltd.,
through its Branch Manager,
Kisan Kranti Building, Market Yard,
Ahmednagar

APPELLANT

VERSUS

1. Smt. Ashabai Raosaheb Khalate,
Age : 20 years, Occu. Household
 2. Kum. Sonali Raosaheb Khalate,
Age : 1 & 1/2 years, Occu. Nil,
 3. Kum. Monali Raosaheb Khalate,
Age : 2 Months, Occu. Nil,
 4. Parvatrao Madhavrao Khalate,
Age : 55 years, Occu. Nil,
 5. Laxmibai Parvatrao Khalate,
Age : 50 years, Occu. Household,
R.Nos. 2 and 3 being minors
Through their natural guardian
Mother R.No.1
- All R/o. Loni Vyankanath
Tq. Shrigonda, District : Ahmednagar
6. Dadarao Wamanrao Ghuge,
Age : Major, Occu. Service (Driver)
R/o.: Haglur, Tal. Tuljapur,
Dist. Osmanabad,
Now R/o.: M/s. Kisa Roadways, Poona,
Satara Road, Pune
 7. Kosa Roadways,
Poona Satara Road,
Pune — 9.

RESPONDENTS

Mr. V.N. Upadhye, Advocate for the appellant
Mr. V.P. Latange, Advocate for respondents No. 1 to 5
None for respondents No. 6 and 7 though served

CORAM : M.T. JOSHI, J.

DATE : 19/01/2015

ORAL JUDGEMENT :

1. Heard both sides.
2. Aggrieved by the direction of the learned Member, Motor Accident Claims Tribunal, Ahmednagar to indemnify the owner of the goods vehicle in payment of compensation to the present respondents No. 1 to 5 in a Motor Accident Claims Petition, the present appeal is preferred by the insurer who was the original respondent No. 3 before the Tribunal.
3. The facts, which are necessary for decision of the present appeal, are that deceased Raosaheb was travelling by a goods vehicle bearing registration No. MTB-7247 when it met with an accident. In the said accident, deceased has died.
- . The learned Tribunal came to the conclusion that the accident has occurred due to rash and negligent

driving of the truck by original respondent No. 1. The case of the present respondents No. 1 to 5 i.e. the original claimants that the deceased was travelling in a goods truck on 22nd July, 1989 with his gunny bags containing groundnuts, was accepted by the learned Member of the Tribunal and on the basis of the material before him, coming to the conclusion that the claimants are entitled to get compensation of Rs. 1,49,600/-, it was directed that the present appellant shall indemnify the truck owner in payment of the said compensation.

4. Mr. V.N. Upadhye, learned counsel for the appellant relied on the ratio in the case of "**Ramesh Kumar Vs. National Insurance Co. Ltd. with other appeals**", reported in **AIR 2001 SC 3363**, in support of his submission that the appellant – insurance company would not be liable to pay compensation.

5. On the other hand, Mr. V.P. Latange, learned counsel for the respondents No. 1 to 5 i.e. the original claimants, relied on the ratio in the case of "**New India Assurance Company Vs. Satpal Singh and others**", reported in **AIR 2000 S.C. 235**.

6. While the ratio in the case of "**New India Assurance Company Vs. Satpal Singh and others**" (supra) would show that even a gratuitous passenger in a goods vehicle is covered by the third party policy of insurance, the ratio in the case of "**Ramesh Kumar Vs. National Insurance Co. Ltd.**" (supra) would show that a distinction is required to be made regarding the date of accident in view of amended Motor Vehicles Act of 1994. The ratio in "**Ramesh Kumar Vs. National Insurance Co. Ltd.**" (supra) would show that since prior to 1994, the provisions of Section 95 of the Motor Vehicles Act were holding the field which did not require the insurer to insure the risk of even the owner of the goods travelling in a goods vehicle and such cases would fall in a different category than the cases wherein the accident occurs after coming into force the provision under section 147 of the Motor Vehicles Act, 1994.

7. In the present case, the accident had occurred on 22nd July, 1989. In the circumstances, the direction of the learned Member of the Tribunal as against the

present appellant would not survive. The appeal, therefore, deserves to be allowed. Hence, the following order:-

8. The appeal is hereby allowed without any order as to costs. The award dated 20th January, 1998, passed by the learned Member, Motor Accident Claims Tribunal, Ahmednagar in Motor Accident Claims Petition No. 33/1990, to the extent of directing the present appellant - insurer to jointly and severally pay the compensation alongwith original respondents No. 1 and 2, is hereby set aside. The respondents No. 1 to 5, however, would be at liberty to execute the impugned award as against the rest of the judgement-debtors.

[M.T. JOSHI]
JUDGE

npj/fa303-98