

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.205 OF 2000

M/s. United India Insurance
Co. Ltd., having its Regd. And
Head Office at 24, White
Street Chennai and Branch at
Jalna and Divisional Office,
V.P.Chowk, Osmanpura, ..Appellant
Aurangabad 431 005, through
its Senior Divisional Manager
and Constituted Attorney
Mr.Bhimsing Julalsing
Somawansi

V E R S U S

- 1 Ashok s/o. Vithoba Dandge, age
35 years, occ.agri.
- 2 Sow.Kasabai w/o. Ashok Dandge,
age 30 years, occ.Household
Both r/o. Koda, Tq. Bhokardan,
Dist.Jalna
- 3 Aliyarkhan Shaukatkhan Pathan,
age 30 years, occ. Driver,
r/o. Anwa, Tq.Bhokardan,
Dist.Jalna
- 4 Bhagwan Kaduba Sable, age 40
years, occ.Business, r/o.
Panavadod, Tq. Sillod, Dist.
Aurangabad ..Respondents

Mr.V.N.Upadhye, advocate for appellant

Mr.J.C.Badve, advocate for respondent nos.1
and 2

Mr.S.G.Shinde, advocate for respondent nos.3
and 4

CORAM : M.T. JOSHI, J.

DATE : JANUARY 27, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction to indemnify the owner of the goods vehicle in payment of compensation to the dependents of the deceased, present appeal is preferred by the original respondent no.3 – Insurer.

3] The facts of the case are that on 25th April, 1999, the deceased - Amol, a six years old boy, was traveling in the goods vehicle bearing registration No.MH-21-A-6517. When the said

vehicle reached near Kothala Bazar in Bhokardan Taluka, it turned turtle in which, the deceased boy as well as a female child died and other family members were injured. Therefore, the parents claimed the compensation.

4] The present appellant has raised the issue of breach of the terms and conditions of the policy of insurance and consequently, it is contended that the appellant is not liable to pay the compensation.

5] Learned Member of the Motor Accident Claims Tribunal relied on the fact that the father of the deceased was a labour employed to take care of the marriage materials and while doing so, he took his son with him and the son died. Therefore, learned Member held that the insurance company is liable to pay the compensation.

6] Mr.Upadhye, learned counsel for the appellant, submits that even if all the facts pleaded by the respondents/original claimants are admitted, then, it would be a case not only covering risk of caretaker of the marriage material carried with him but also of his family members.

7] On the other hand, Mr.Badve opposes the plea. He relied upon the ratio in the case of ***National Insurance Co. Ltd. Vs. Smt. Ashwini Balu Gaude and ors., 2012(3)All M.R. 181.***

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

Whether the appellant is liable to indemnify the original respondent no.2 – Bhagwan, owner of the goods vehicle, in payment of the compensation ?

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

R E A S O N S

9] It should be noted that, admittedly, the vehicle in question, was a goods vehicle. The deceased, a six years old child, was being carried with the marriage party in the said vehicle, as is clear from the certified copy of the F.I.R. He met with unfortunate death. In the case of **National Insurance Co. Ltd. Vs. Smt. Ashwini Balu Gaude and ors.** (cited supra), it was found that the deceased was a caretaker of the marriage gift articles. Thus, in a way, the deceased was a representative of the owner of the goods and therefore, it was held that the insurer was liable to pay the compensation.

10] In the present case, a six years old child has died in the accident while he was proceeding by the goods vehicle. It was clearly in breach of the terms and conditions of the policy of insurance.

11] Mr.Badve alternatively submits that since the breach is not fundamental one, the appellant may be directed to pay the compensation with liberty to recover the same from the insured.

12] In my view, the breach is fundamental one, as in the goods vehicle, the marriage party was being carried, no such order can be passed.

13] In the result, the appeal is allowed without any order as to costs.

. The award passed by learned Member, Motor Accident Claims Tribunal, directing present

appellant to pay the compensation, jointly and severally with rest of the original respondents, is hereby set aside.

. Instead, the claim petition, as against present appellant i.e. original respondent no.3, is dismissed.

[M.T. JOSHI, J.]

kbp