IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 206 OF 2004

The Oriental Insurance Co. Ltd.
Through Divisional Manager,
Divisional Office, Aurangabad **....Appellant.**
(Ori Resp. No. 3)

Versus

1. Leelabai w/o. Ashok Pawar,
Age 34 years, Occu. Household,
R/o. Sudamwadi, Shivoor,
Tq. Vaijapur, Dit. Aurangabad.

2. Dnyaneshwar s/o. Ashok Pawar,
Age 22 years, Occu. Agri.,
R/o. As above.

3. Balu s/o. Ashok Pawar,
Age 19 years, Occu. Student,
R/o. As above. **....Respondent 1,2,3.**
(Ori. Claimants.)

4. Shantinath s/o. Raibhamn
Sonawane, Age 50 years,
Occu. Business, R/o. Shivoor,
Tq. Vaijapur, Dist. Aurangabad.

5. Gokul s/o. Shantinath Sonawane,
Age 20 years, Occu. Driver,
R/o. As above. **....Respondent 4 & 5.**
(Ori. Resp Nos 1 & 2)

6. Sharda d/o. Ashok Pawar,
Age 13 years, Occu. Student,
R/o. As above.
Under Guardian of R. No. 1. **.....Respondents.**

Mr. A.S. Deshpande, Advocate for appellant.

Mr. P.B. Shirsath, Advocate for respondent Nos. 1 to 3.

CORAM : T.V. NALAWADE, J.
DATED : 8th December, 2015.

JUDGMENT :

1) The appeal is filed by Insurance Company against the judgment and award of Claim Petition No. 50/1999, which was pending before the Claims Tribunal, Aurangabad. The petition filed by present respondent Nos. 1 to 3 and 6 is allowed by Claims Tribunal. Both the sides are heard.

2) Deceased Ashok Pawar was aged about 35 years and he was the husband of claimant No. 1. Claimant Nos. 2 to 4 are the issues of claimant No. 1 born from the deceased. It is the case of claimants that deceased was cultivating his land and he was also in milk business. It is contended that his monthly income was around Rs. 4,000/- and claimants were depending for their livelihood on the income of the deceased.

3) The accident took place on 6.12.1998 on Chalisgaon - Dhule road and the spot is situated within the local jurisdiction of Mohadi Nagar Police Station, Dhule. It is contended that the deceased was proceeding in truck No. MH-19/5361 and he was carrying his cotton in the truck for its sale in Sendhva (M.P.) market. It is contended that due to rash and negligent driving of

this truck by its driver, the truck left the road and fell in to a valley. Ashok died in the accident. The Claim Petition was filed against the owner, driver and Insurance Company of the truck for getting compensation of Rs. 4,00,000/- under the principle of fault.

4) Respondent No. 3, Insurance Company filed written statement and contested the matter. The fact of insurance was not disputed. The Insurance Company denied that the deceased was travelling in the truck as owner of goods. It contended that the deceased was gratuitous passenger and so, the risk in respect of deceased was not covered and Insurance Company is not bound to pay anything.

5) The claimants gave evidence. Claimant No.1 examined herself. They have no personal knowledge regarding the accident. They placed reliance on the police papers. The crime was registered on the basis of report given by one Police Officer and it was given after making inquiry. The report shows that it was informed that the person, who was travelling in the vehicle was travelling with the cotton for taking it to Sendhva market. Copy of panchanama at Exh. 28 is consistent with this case. It is not disputed that Ashok died in the accident. There is

the record like post mortom report, inquest panchanama etc. in that regard. Copy of cover note of insurance policy was produced on the record.

6) The 7/12 extracts in respect of the lands of deceased were produced and the record shows that he was taking crops like sugarcane, cotton etc. Thus, there is record in support of contentions made by the claimants. The Tribunal has presumed that monthly income of deceased was atleast Rs. 3,000/-. As the accident took place in the year 1998 and at that time, the presumptive income under the Schedule given in section 163-A of the Motor Vehicle Act was also similar and there are no circumstances for drawing other inference, in the present matter, this Court holds that the Tribunal has not committed any error in calculating the compensation amount. 1/3rd amount is deducted and for the age of 36, 15 was adopted as multiplier. On the ground of loss of consortium only the amount of Rs. 5,000/- was given and on the ground of loss of estate, the amount of Rs. 2000/- is given. No separate amount is given for funeral expenses and the total amount of Rs. 3.22 lakh is given as compensation.

7) The learned counsel for Insurance Company

submitted that there was no convincing evidence to prove that the deceased was travelling with his goods and he was owner of goods. The aforesaid record is sufficient to prove that the deceased was travelling with his goods. Argument was advanced on one more circumstance and it was submitted that the report was given by the Police Officer for registration of offence punishable under section 3 r/w. 181 and 184 of Motor Vehicle Act and so, there has been breach of conditions of policy also. Copy of chargesheet is not filed by the Insurance Company and no evidence was given to show that driver was not holding valid and effective driving licence. In view of these circumstances, this Court holds that it is not possible to believe that there was breach of conditions of policy. When the policy is admitted, Insurance Company is bound to indemnify the owner. Thus, no interference is possible in the decision given by the Claims Tribunal.

8) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

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