IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 419 OF 1998

United India Insurance Co.
(Jalgaon Branch Office at Peth
Dana Bazar, Jalgaon - through
it's Assistant Manager & authorised
representative and signatory,
Aurangabad Division, Aurangabad,
for & on behalf of the Branch
Manager, Branch Office, Jalna) .. Appellant

Versus

1. Shri Bhavsing S/o Raysingh Suradkar,
Age : 57 Years, Occu. : Agriculture,
R/o Godri, Tq. Bhokardan,
Dist. Jalna.

2. Sow Shatabai w/o Bhavsingh Suradkar,
Age : 42 years, Occu. : Household & Agril.,
R/o Godri, Tq. Bhokardan,
Dist. Jalna.

3. Ayyoubsaha S/o Raheman Shaha,
Occu. : Business, R/o Shendurni,
Tq. Jamner, Dist. Jalgaon,
at present at Godri,
Tq. Bhokardan, Post : Sipora,
(Bazar), Tq. Bhokardan,
Dist. Jalna.

4. Sk. Kasam S/o Shaikh Janam,
Age : 29 Years, Occu. : Driver,
R/o Godri, Post : Sipora Bazar,
Tq. Bhokardan, Dist. Jalna. .. Respondents

Shri Atul B. Gatne, Advocate for the Appellant.
Shri Dhananjay Deshpande, Advocate for Respondent Nos. 1 and 2.
The Respondent Nos. 3 and 4 are served by affixing the notice.

CORAM : S. V. GANGAPURWALA, J.

Date on which reserved for Judgment : 26/08/2015
Date on which judgment pronounced : 07/10/2015

JUDGMENT :-

. The present respondent Nos. 1 and 2/claimants filed application for compensation U/Sec. 166 of the Motor Vehicles Act (hereinafter referred as to the "M. V. Act" for the sake of brevity) on account of death of deceased Dnyaneshwar who died in an accident involving metador. The Tribunal partly allowed the claim application and granted total compensation of Rs. 90,000/-. Aggrieved thereby the Insurance company has filed the present first appeal.

2. Mr. Gatne, the learned counsel for the appellant strenuously contends that, the deceased was one of the member of the marriage party at the time of accident. The FIR was filed by one of the claimant's himself stating that the deceased was one of the members of the marriage party. This aspect has been totally ignored by the Tribunal. The deceased was travelling in the goods vehicle. No further proof is required that, the deceased was travelling as a passenger i. e. a member of the marriage party in the goods vehicle. The said fact is established by the FIR which is

lodged by Jaysing Shivnath. It is a case of clear breach of policy and the insurance company cannot be held responsible and liable for the same. The learned counsel submits that, in the claim application a false story was put forth that the deceased was travelling along with his goods. There is no evidence in this regard, nor the same is discussed by the learned Judge.

3. Mr. Deshpande, the learned counsel for respondent Nos. 1 and 2/claimants submits that, the deceased was travelling in the said metador along with his goods. The evidence to that effect has been led. There is no cross examination to the claimants statement that the deceased was travelling along with goods in the said vehicle. Moreover, additional premium of Rs. 50/- is paid for non fare paying passengers. IMT 14 is not part of the record. No error has been committed by the Tribunal.

4. Mr. Gatne, the learned counsel for the appellant in reply submits that, the spot panchanama nowhere shows the presence of goods. The pleading in the claim petition also clearly shows that, in the said metador marriage party was travelling. It is only in the examination in chief, it is stated that, the deceased was travelling along with the goods. According to the learned counsel for the Insurance Company, it is clear case of breach of policy. The Insurance company is not at all liable.

5. I have considered the submissions canvassed by the learned

counsel for respective parties. I have also gone through the record and proceedings.

6. It is clear from the pleadings that, the metador in question was initially booked for taking a marriage party. However, accident had occurred when the said metador was returning after completion of marriage ceremony. The deceased was travelling with one Gafoor. It is not the case that the deceased was member of marriage party. Even the owner and driver of the vehicle have filed written statement, who have specifically stated that, the deceased Dnyaneshwar and Shaikh Gafoor were independent. As such, it is nobody's case that he was part of marriage party. The Insurance company can be made liable only if it is shown that the deceased was travelling along with goods. In the examination in chief of the claimants, it has been stated that, the deceased was travelling along with goods. There is no cross examination to that effect by the Insurance company, nor by the owner or driver of the vehicle. There is another facet to the case that, Rs. 50/- is taken as additional premium for non fare paying passenger.

7. Even if it is assumed that the deceased was a passenger, there is nothing on record to suggest that, he had paid any fare. The Insurance company has not placed before the Tribunal IMT 14 nor has led any evidence in this regard, nor pleaded about it in written statement for the Tribunal to come to definite conclusion. However, it is a fact that, Rs. 50/- was charged as additional

premium for non fare paying passengers.

8. The compensation awarded is only Rs. 90,000/-. I would have granted opportunity to the Insurance Company to lead the evidence to that effect, however, considering the fact that, the accident is of the year 1996, the compensation awarded is also paltry sum of Rs. 90,000/- and the finding is arrived at by the Tribunal that the deceased was travelling along with goods, I am not inclined to remand back the matter for further evidence. The first appeal as such is dismissed, however, with no order as to costs.

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/Sept. 15