IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 9 OF 2000

Oriental Insurance Company Ltd.,
'Daulat Building', Shivaji Chowk,
Parbhani, through its duly constituted
Attorney Jugalkishore Rampal Karwa,
Age: 59 years, Senior Divisional Manager,
Oriental Insurance Co. Ltd.,
Adalat Road, Aurangabad ...APPELLANT/
ORIG. RESPDT. NO.3

VERSUS

1. Nanarao S/o Tukaram Thengle,
Age: Major, Occu: Labour,
R/o. Shivni (Kh), Tq. Kalamnuri,
Distt: Parbhani ... RESPDT.No.1/
ORIG.CLAIMANT

2. Sadashiv S/o Yeshwant Jatale
Age: Major, Occup: Agriculture,
R/o. Village Jatala, Tq: Kalamnuri,
Distt: Parbhani

3. Gautam S/o Gomaji Patode
Age: Major, Occup: Driver,
R/o. Umari, Tq: Kalamnuri,
Distt: Parbhani ...RESPDTS. 2 & 3/
ORIG.RESPDT. Nos.
1 & 2/ OWNER &
DRIVER RESPECTIVELY

Mr. Anil Joshi, Advocate for appellant
Mr. U. N. Shete, Advocate for respondent No.1

CORAM : M. T. JOSHI, J.
DATE : JANUARY 29, 2015

ORAL JUDGMENT

1. Heard Mr. Joshi, learned counsel for appellant – insurance company and Mr. Shete, learned counsel for respondent No.1-claimant. None for respondents No. 2 and 3 though served.

2. Arguments of learned counsel for the parties, pleadings and evidence of the parties would show that one Shivaji S/o Nanarao Thengle died in an accident on 20-05-1994 while he was proceeding by a tractor and trolley bearing registration No. MH-22/6198 owned by present respondent No.2 (original respondent No.1).

3. It was the case of respondent No.1-original claimant Nanarao, father of deceased Shivaji, that the deceased was being carried in the trolley as a coolie for loading and unloading fertilizers. According to him, the accident occurred due to rash and negligent driving by present respondent No.3 Gautam (original respondent No.2). Therefore, compensation was claimed from present respondents No.2 and 3 and appellant herein – insurer of the vehicle.

4. The learned Member of the tribunal came to the conclusion that since the deceased was traveling as a coolie and policy of insurance did not show that risk of a coolie is not covered, present appellant was directed to pay compensation of ₹ 80,000/- jointly and severally with the owner and driver of the vehicle.

5. The case of the present appellant that it is not liable to pay any compensation as risk of the coolie was not covered, is negated by the tribunal. Hence, this appeal.

6. Mr. Joshi, learned counsel for appellant submits that there is no statutory liability on the appellant to cover the risk of workman. Learned Member of the tribunal, however, took a reverse stand that policy does not bar traveling of coolie in the tractor or trolley.

7. The following point arise for my determination.

> Whether the appellant is liable to indemnify the owner and driver of the tractor and trolley for payment of compensation to the claimant ?

8. My finding on the aforesaid point is in the negative. Appeal is therefore, allowed without any order as to costs for the following reasons.

R E A S O N S

9. Exhibit - 29 is a copy of certificate-cum-policy of insurance placed on record and proved by the Branch Manager of the appellant. It would show that the basic premium ₹ 120/- for the tractor and basic premium of ₹ 30/- for the trolley totaling to ₹ 150/- was received and accepted by the appellant. There is no statutory compulsion to cover the risk of workman. Respondent No.1-claimant came with the case that the deceased was being carried in the trolley as a workman. In the circumstances, when there was no contract of insurance between the appellant-company and the owner of the tractor and trolley regarding coverage of risk of the workman, present appellant could

not have been directed by the tribunal to indemnify the owner of the tractor and trolley in payment of compensation.

10. Appeal is, therefore, allowed without any order as to costs. Direction of the learned Member, Motor Accident Claims Tribunal, Parbhani to the present appellant to pay jointly and severally compensation to respondent No.1-claimant is hereby set aside, instead claim petition as against the appellant herein is dismissed without any order as to costs.

11. The appellant would be at liberty to withdraw the statutory deposit made in this court, after a period of sixty days from the date of this judgment.

(M. T. JOSHI, J.)

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