

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 328 OF 2000
WITH
CIVIL APPLICATION NO. 4753 of 2000

The Manager,
United India Insurance Co. Ltd.,
Through it's registered office,
at Hanuman Chowk, Latur
District Latur
Through Divisional Manager,
Aurangabad

.. Appellant/
Applicant

VERSUS

1. Chitrabai W/o Sheshrao Ghute,
Age : 36 years, Occu: Household,
2. Suresh S/o Sheshrao Ghute,
Age : 11 years, Minor under
Guardianship of mother Chitrabai
Sheshrao Ghute,

Both resident of Aksharwai,
Tal. Latur, District Latur

3. Pirsab Madar Patel,
Age : 34 years, Occu.: Driver,
R/o.: Basavkalyan,
Tq. & District Beeder
(Karnataka State)
4. Shri Nizamoddin
Age : Major,
R/o.: 5-6-247/3, Aghapura,
Hyderabad, (A.P. State)

.. Respondents
(Nos.1 & 2 Orig. Claimants,
Nos.3 & 4 Ori. Resp. 1 & 2)

**Appeal is dismissed as against R.No. 3, vide
Court's order dated 14.09.2004.**

Mr. S.G. Chapalgaonkar, Advocate for the appellant/applicant
Respondent nos.1 and 2 served
Respondent no.4 served by paper publication

CORAM : M.T. JOSHI, J.

DATE : 28/01/2015

ORAL JUDGMENT :

1. Heard Mr. Chapalgaonkar, learned counsel for the appellant. None appears for the respondents though duly served.

2. Aggrieved by the decision of the Member of the Motor Accident Claims Tribunal, Latur directing the present appellant i.e. the Insurer to pay compensation by indemnifying the owner of the goods vehicle, in paying the compensation, the present appeal is preferred.

3. The pleadings, the evidence and the findings of the learned Member would show that while respondent nos.1 and 2 i.e. the original petitioners came with the case that the deceased Sheshrao was proceeding on foot near village Pimpalner on Aurangabad-Beed road, the goods vehicle gave dash to him causing his death, the plea of the present insurer as well as the investigation

by the Police, including the F.I.R., would show that in-fact, the deceased was travelling by the said goods truck at the time of the accident. Resultantly, he died.

4. The witnesses examined by respondent nos.1 and 2 were not the witnesses to the incident. In the circumstances, relying on the investigation papers and the certified copy of the F.I.R., the Tribunal held that the deceased was occupant of the goods vehicle, however, in view of the ratio of **New India Assurance Co. Ltd. V. Satpal Singh AIR 2000 S.C. 235**, the Tribunal held that even the occupant of the goods truck would be entitled for compensation from the insurer. Aggrieved by the said decision, the present appeal is preferred.

5. Initially, the appeal preferred by the appellant-Insurance Company was dismissed by this Court in view of the ratio of **Satpal Singh** vide order dated 24/09/2001. Aggrieved by the same, the present appellant has preferred the Civil Appeal No.9149 of 2003 to the Supreme Court of India. By that time, the decision in the case of **Satpal Singh** was referred to the larger Bench by the Supreme Court of India and in the

case of **New India Assurance Company Ltd. V. Asha Rani and others**, the ratio of **Satpal Singh** was overruled. In the circumstances, the Supreme Court of India vide order dated 17/11/2003 remanded the case back to this Court.

6. Mr. Chapalgaonkar relies on the ratio of **New India Assurance Co. Ltd. V. Asha Rani** (cited supra). It would show that the ratio of **Satpal Singh** is overruled.

7. In the present case, what is found is that while the deceased was travelling by the goods vehicles, the accident has occurred. The policy was Act only policy. Therefore, in view of the ratio of **Asha Rani**, the appellant would not be liable to indemnify the vehicle owner in payment of the compensation. In the result, the following order:-

8. The appeal is hereby allowed without any order as to costs.

9. The award of the learned Member of the Tribunal directing the present appellant to pay the compensation jointly with the owner of the vehicle is hereby set

aside. Instead, the original Petition itself is dismissed as against the present appellant.

10. The amount deposited by the appellant in this Court be refunded to it after a period of 60 days from the date of this order.

11. First Appeal stands disposed of accordingly.

12. Consequently, Civil Application no. 4753 of 2000 seeking stay to execution of the impugned judgment also stands disposed of.

[M.T. JOSHI]
JUDGE

arp/