

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**FIRST APPEAL NO. 23 OF 1999**

United India Insurance Company,  
Near Railway Station, Jalgaon,  
Mansing Market, Jalgaon

.. Appellant  
(Orig.Resp.No.3)

**VERSUS**

1) Aaishabi W/o Shaikh Salim  
Age : 22 years, Occu.: Household,  
C/o.: Jainuddin Shaikh Abdulla,  
R/o.: Tambapura, Jalgaon

2) Shaikh Sobeb Shaikh Salim  
Age : 2 years,

3) Sumayyabi Shaikh Salim  
Age : 3 years,

No.2 and 3 minors, through  
their natural guardian mother  
Aaishabi Sk. Salim

4) Mohammad Sakur Shaikh Bura,  
Age : 50 years, Occu: Transport,  
R/o.: Indira Nagar, Shahunagar,  
Jalgaon

5) Shaikh Sabbir Shaikh Abdulla,  
Age : 70 years,  
R/o.: Jalgaon

6) Aminabi W/o. Sk. Sabbir,  
Age : 65 years, Occu.: Household,  
R/o.: Jalgaon.

.. Respondents  
(Orig. Claimant &  
Resp. No.2,4 & 5)

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Mr. D.V. Soman, Advocate for the appellant  
Mr. Santosh V. Munde, Advocate i/b. Mr. K.C. Sant, Advocate  
for the respondents 1 to 3  
Mr. V.T. Choudhary, Advocate for respondent no.4  
None present for respondent nos.5 and 6 though served.

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**CORAM : M.T. JOSHI, J.**

**DATE : 15/01/2015**

**ORAL JUDGMENT :**

1. Heard both sides.
2. Aggrieved by the award of the learned Member of the Motor Accident Claims Tribunal, Jalgaon, directing the present appellant-Insurer of the goods truck to indemnify the owner of the goods truck in payment of the compensation, the present appeal is preferred.
3. Deceased-Shaikh Salim was travelling by goods truck bearing registration no. MH/10/3537 on 16/11/1994 on Navapur road at 2:15 a.m.. The truck met with accident. The deceased died in the accident. It was claimed by the present respondent nos. 1 to 3 i.e. the dependents that the deceased was travelling in the said goods truck as the owner of sarees as he was in the business of selling sarees. The accident occurred due to the rash and negligent driving of the truck. The present appellant being the insurer of the said goods truck during the relevant period, compensation was claimed from it at the rate of Rs.3,50,000/- alongwith other respondents i.e. the owner of the goods truck.

4. The learned Member came to the conclusion that the deceased was the owner of the goods in the goods vehicle and, therefore, there was no breach of the terms and conditions of the policy of insurance as pleaded by the appellant in the written statement. It was further found that there was no documentary evidence regarding the income of the deceased and, therefore, the learned Member held the income of the deceased at the rate of Rs.15,000/- per annum. After deduction of 1/3rd towards the personal expenses, the multiplicand was arrived at Rs.10,000/- per annum. In view of the school leaving certificate at exhibit 37, it was proved that the deceased was 23 years of age. Therefore, multiplier of 18 was applied and thus, the compensation of Rs.1,80,000/- towards the loss of dependency was granted. Additionally, an amount of Rs.10,000/- towards the loss of consortium and estate and Rs.2,000/- for funeral expenses were granted and the total compensation was arrived at Rs.1,92,000/- with interest at the rate of 12% per annum payable by the respondents - the owner and the insurer i.e. the present appellant.

5. Mr. Soman, learned counsel for the insurer submitted that there was no proof regarding the fact that the deceased was travelling with the goods vehicle alongwith the bales of sarees. The investigation of the Police would show that in all 15 persons were travelling by the said goods truck. Deposition of respondent no.1- Aaishabi – widow in her cross-examination that she was not aware as to whether the deceased had gone to Surat for bringing the bales of sarees, would falsify the case of the claimants. In the circumstances, it was submitted that the appeal be allowed.

6. Learned counsel for the respondent nos.1 to 3 supported the reasoning of the learned Member of the Motor Accident Claims Tribunal.

7. On the basis of this material, following point arises for my determination :

I) Whether the deceased was travelling in the goods truck in breach of the terms and conditions of the policy of insurance?

My finding to the said point is in the negative. The appeal is therefore dismissed for the reasons to follow.

**R E A S O N S**

8. In the claim petition, respondent no.3 has pleaded that the deceased was in the business of purchase of sarees for wholesale business and to sell the same by hawking in various cities. It was also pleaded that he was carrying the bales of sarees in the truck. The certified copy of the panchanama of spot of occurrence placed on record by these respondents at Exhibit 32 would show that the truck was carrying certain bags containing salt as well as the bales of sarees.

9. It should be noted that respondent no.1 i.e. the widow of the deceased is an illiterate lady. In that view of the matter, when she candidly admitted in her cross-examination that her husband has not informed her as to where he was going and whether he was returning with the bales of the sarees, her statement cannot be faulted with doubting the version of this respondent, that the deceased was in the business of sale and purchase of sarees when the same is corroborated by the panchanama of spot of occurrence.

No fault can be found with the reasoning of the learned Member of the Motor Accident Claims Tribunal.

In the result, the following order:-

10. The appeal is hereby dismissed without any order as to costs.

**[M.T. JOSHI]**  
**JUDGE**

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