

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 591 OF 2011

New India Assurance Co. Ltd., Through
its Branch Manager, Behind Dudhiwala
Bungalow, Mandore Market, 2nd floor,
Jalgaon, Taluka and District Jalgaon,
Through its authorized signatory Mr.
Sanjiv s/o Ramrao Gaisamudre, Age 50
years, Occupation Service, Sr. Div.
Manager, New India Assurance Co.Ltd.,
Resident of Aurangabad

Appellant

V E R S U S

- 1 Kamalbai wd/o Bhikan Mistary, Aged 34
years, Occupation Household,
- 2 Umakant Bhikan Mistary, Aged 16
years, Occupation Education, Minor
- 3 Harsha Bhikan Mistary, Aged 14 years,
Occupation Education, Minor
- 4 Varsha Bhikan Mistary, Aged 12 years,
Occupation Education, Minor
- 5 Anusayabai Ramdas Mistary, Aged 72
years, Occupation Household [**Deleted
as per leave dt. 30.08.2011**]

Respondents

Respondent No.1 for herself and for
respondent nos.2 to 4 as Guardian,
Mother

All resident of Ravanje, Taluka
Erandol, District Jalgaon

- 6 Sukumar F. Choughule, Aged 47 years,
Occupation Business, Resident of Plot
No.267/6, Neminath Nagar, Near
Appasaheb Birnale College, Sangli,
Taluka and District Sangli
- 7 Chhaya Mohan Shinde, Aged 42 years,
Occupation Business, Resident of
461/20 B, Maruti Road, Sangli, Taluka
and District Sangli.

Mr. Dhananjay Deshpande, Advocate for the appellant
Mr. P.N. Kutti, Advocate for respondent nos.1 to 4
Mr. N.V. Gaware, Advocate for respondent no.6
Mr. P.S. Paranjape, Advocate for respondent no.7

CORAM : A. V. NIRGUDE, J.

DATE : 22nd JULY, 2015

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. This appeal is taken up for final hearing and heard finally.

4. This is Insurance Company's appeal against the Judgment and Award passed by the learned Member of Motor Accident Claim Tribunal, Jalgaon, in Motor Accident Claim bearing No.399 of 2002. The claim was filed by next of kinds of one Bhikan, who died due to injuries caused in motor vehicle accident.

5. **The admitted facts are as under :-**

Respondent no.6 is the owner of Truck-dumper, in which Bhikan was traveling at the time of accident. The appellant-Company had insured respondent no.6 and his employees, as per the terms of insurance policy.

The accident took place due to collision between the truck-dumper and a Car. Bhikan died, and this petition was filed with a pleading that Bhikan was an employee of a Company by name "M/s. S.F. Choughule Engineers and Contractors", Sangli. There is no statement in pleading that respondent no.6 has any concern with M/s.S.F. Choughule Engineers and Contractors, Sangli. The appellant Insurance Company, in the facts and circumstances narrated above, took a defence that since Bhikan was not an employee of respondent no.6, they are not liable to pay compensation. Despite of this specific pleading, no attempt was made by all concerned at the trial stage to frame an issue as to whether Bhikan was in any way concerned or an employee of respondent no.6 owner of the truck dumper.

6. The evidence was recorded, and even in the evidence, no indication is given as to what was the relationship between respondent no.6-owner of the truck-dumper and employer of the deceased. Unfortunately for the claimants, respondent no.6 did not even file written statement. He probably did not realize that the stand taken by the Insurance Company would ultimately adversely affect him. If the Insurance Company is held not liable to pay compensation, he would pay the compensation. Without realizing this risk, respondent no.6 kept quite, neither filed pleading nor entered into witness-box.

Nonetheless, having regard to the defence raised by the Insurance Company, it was still responsibility of the claimants to show as to how the Insurance Company is still liable for compensation. It can be said that they did not lead relevant evidence for throwing sufficient light on this question, because there was no specific issue framed by the learned Member of the Tribunal. I am, therefore, inclined to allow this appeal and remand the case back to the lower Court for fresh trial. Learned counsel for respondent no.6 urged the Court to give his client permission to file written statement. Such permission can be given on payment of cost of Rs.10,000/- [Rupees Ten Thousand]. The appeal is allowed, in terms of following order :-

O R D E R

1] The impugned judgment passed in M.A.C. No.399 of 2002 on 14th October, 2010, by the Member of Motor Accident Claims Tribunal, Jalgaon, stands set aside.

2] The case is remanded back to the Tribunal.

3] The parties shall appear before the Motor Accident Claims Tribunal, Jalgaon on 19th August, 2015. On that day, Written Statement of respondent no.6-Sukumar F. Choughule should come on record along

with costs of Rs.10,000/- [Rupees Ten Thousand] which would be payable to the claimants.

4] Following additional issue should be framed :-

"Whether the claimants prove that Bhikan was covered by insurance policy between the Insurance Company and owner of the truck [dumper]?"

5] Additional evidence may be recorded.

6] The amount deposited in the Court shall stand transferred to the Motor Accident Claims Tribunal, Jalgaon.

7] The undertaking given by the claimants for withdrawing an amount of Rs.1 Lac shall continue till disposal of the claim petition before the Tribunal.

8] Learned Member of Motor Accident Claim Tribunal, Jalgaon is requested to expeditiously decide the claim petition.

(A.V. NIRGUDE, J.)

