UNREPORTED

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

FIRST APPEAL NO.350 OF 2001

Muktabai W/o Yeshwantrao
Dongre, Age 43 years, Occ.
Household, R/o Shindeban
Zopadpatti, Ashoknagar,
Chikalthana, Aurangabad. … Appellant.

Versus

1. Samadhan S/o Kondiram Pawar,
Age 30 years, Occ.Driver,
R/o Gautamnagar, Aurangabad.

2. Babusingh S/o Ramchand Rajput,
Age major, Occ.Business,
R/o Vishnu Nagar, Aurangabad.

3. New India Insurance Company
Ltld.,Aurangabad.

4. Sk.Rashid S/o Syed Sandu,
Age major, Occ.Business,
R/o Sattar Motor Garage,
Jalna Road, Aurangabad.

5. Oriental Insurance Company
Ltd., Aurangabad.

6. Rajendra S/o Yeshwantrao Dongre,
Age 20 years, occ.Labour R/o
Shindeban Zopadpatti, Chikalthana,
Aurangabad.

7. Sandu S/o Yeshwantrao Dhongre,

Age major, Occ.Education, R/o
as above. … Respondents.

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Mr.S.K.Barlota, advocate for the appellant.
Mr.S.K.Hingole, advocate for Respondent No.1.
Mr.S.D.Kulkarni, advocate for Respondent No.3
Mr.N.R.Solunke, advocate for Respondent No.4.
Mr.A.H.Kasliwal, advocate for Respondent No.5.

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CORAM : S.V.GANGAPURWALA,J.

Date : 08.09.2015.

ORAL JUDGMENT :

1. Heard.

2. The present appellant has filed claim petition U/s 166 of the Motor Vehicles Act. The same is partly allowed as against Respondent Nos.1 and 4. The claimant has filed present appeal, aggrieved by the grant of inadequate compensation and also exonerating the Insurance Company i.e. Respondent No.5.

3. Mr.Barlota, learned counsel for the appellant submits that the deceased was travelling as a labourer in the truck in question, which met with an accident. The

deceased died. The learned counsel submits that the Insurance policy is produced on record which shows that the said policy covered liability of non-fare paying passenger. Additional premium of Rs.42/- (Rupees forty two) was paid. Even it covered liability of six coolies. The other labourer Sopan who was travelling in the said truck and who was injured had filed a claim petition in which the Insurance Company was held liable to pay compensation amount along with owner of the vehicle and driver. The said Sopan has also given statement that deceased was also a labourer along with him. The said statement on oath is given in the present proceedings and his evidence is not shattered in the cross-examination. The learned counsel submits that in the claim petition also it was stated that the deceased used to take labour contracts and also was doing carpenter work, however, this aspect is not considered. Even in respect of quantum of compensation it is submitted by learned counsel that Rs.100/- per day ought to have been considered as income and the multiplier of 14 ought to have been applied. Even on account of non-pecuniary damages, paltry sum is awarded.

4. Mr.Kasliwal, learned counsel for the Respondent No.5 submits that the deceased was travelling in a goods vehicle as a passenger. His liability is not covered under the policy. The Insurance Company has been rightly exonerated. The Tribunal has rightly scanned the evidence in this regard. In the claim petition also the claimant has no where stated that the deceased was travelling as a labourer.

5. I have considered the submissions. One Sopan was also travelling with the deceased in the truck. In evidence said Sopan has stated that the deceased was travelling with him as labourer employed for loading and unloading sand. In the pleadings it is stated by the claimant that the deceased was a carpenter and also used to take labour contracts. The totality of the evidence will have to be considered. The Respondents do not appear to have stepped into the witness box, whereas claimant and the witnesses of the claimant have stated that the deceased was travelling as a labourer. The

policy covers six coolies. It also covers authorised non-fare paying passenger as per END IMT 14(b).

6. The Insurance Company has not produced IMT 14(b) on record to explain in what circumstances non-fare paying passengers are covered. In absence of any proof in this regard and the policy showing coverage of non-fare paying passenger and also of coolies, taking case of the appellant either way, the Insurance Company could not have been exonerated.

7. In light of the above, I hold that the Respondent No.5 also would be jointly and severally liable along with Respondent Nos.1 and 4 to pay the compensation amount.

8. As far as quantum is concerned, the Tribunal ought to have considered Rs.1,500/- p.m as income of the deceased, in absence of actual proof of income. Yearly loss of dependency would be Rs.1,800/- deducting amount towards the personal expenses, it would come to Rs.12,000/-

per year. The deceased as per Post-mortem report was aged 45 years. In view of the judgment of the Apex Court in a case of **“Smt.Sarla Verma and others Vs. Delhi Transport Corporation and another”** reported in **AIR 2009 Supreme Court 3104,** the multiplier of 14 would be applicable. Applying the multiplier, the loss of dependency would come to Rs.1,68,000/- (Rupees one lac sixty eight thousand). It would be seen that no amount has been awarded towards non-pecuniary damages. I would award Rs.50,000/- (Rupees fifty thousand) towards loss of love and affection, consortium and loss of estate. As such the claimant would be entitled for total compensation of Rs.2,18,000/- (Rupees two lacs eighteen thousand).

9. In the result, the order of the Tribunal is set aside and modified as under :

a) The Respondent Nos.1,4 and 5 are jointly and severally liable to pay compensation amount of Rs.2,18,000/- (Rupees two lacs eighteen thousand) to the claimant along with interest at the rate of Rs.7.5 % p.a. from the date of petition till realisation. The claimant shall pay Court-fees on the additional amount of compensation.

Sd/-
(S.V.GANGAPURWALA,J.)

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