

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1426 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
 Age : 49 years, Occu.: Business,
 R/o Hindawadi, Tq. And Dist. Belgam,
 Belgam (Karnataka State)

.. Appellant
 (Orig. Resp. No.1)

VERSUS

1] Vatsalabai W/o Ramdas Lokhande,
 Age 42 years, Occu.: Household,
 R/o Pimpla, Tq. Ashti,
 Dist. Beed

2] Rohidas S/o Ramdas Lokhande,
 Age : 21 years, Occu.: Labour,

3] Usha D/o Ramdas Lokhande,
 Age : 19 years, Occu.: Household,

Resp. No.2 and 3 are R/o
 Pimpla, Tq. Ashti, Dist. Beed

4] The New India Assurance Co. Ltd.,
 Branch Belgum, Through Branch
 Manager, New India Assurance Co.
 Ltd., Br. Jalna Road, Beed

.. Respondents
 (Resp. No.1 to 3 are
 the Orig. Claimants
 in M.C.A. No.209/99
 and Resp. No.4 is
 Ori. Resp.No.2 in
 M.C.A. No.209/99)

WITH

FIRST APPEAL NO. 1427 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
 Age : 49 years, Occu.: Business,
 R/o Hindawadi, Tq. And Dist. Belgam,
 Belgam (Karnataka State)

.. Appellant
 (Orig. Resp. No.1)

VERSUS

- 1] Vatsalabai W/o Ramdas Lokhande,
Age 42 years, Occu.: Household,
R/o Pimpla, Tq. Ashti,
Dist. Beed
 - 2] Rohidas S/o Ramdas Lokhande,
Age : 21 years, Occu.: Labour,
 - 3] Usha D/o Ramdas Lokhande,
Age : 19 years, Occu.: Household,
- Resp. No.2 and 3 are R/o
Pimpla, Tq. Ashti, Dist. Beed
- 4] The New India Assurance Co. Ltd.,
Branch Belgum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 to 3 are
the Orig. Claimants
in M.C.A. No.208/99
and Resp. No.4 is
Ori. Resp.No.2 in
M.C.A. No.208/99)

WITH

FIRST APPEAL NO. 1428 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
Age : 49 years, Occu.: Business,
R/o Hindawadi, Tq. And Dist. Belgam,
Belgam (Karnataka State)

.. Appellant
(Orig. Resp. No.1)

VERSUS

- 1] Sangita W/o Keshav Lokhande,
Age 33 years, Occu.: Household,
R/o Pimpla, Tq. Ashti,
Dist. Beed
- 2] Babasaheb S/o Keshav Lokhande,
Age : 11 years,
- 3] Rani D/o Keshav Lokhande,
Age : 12 years,

- 4] Bholi D/o Keshav Lokhande,
Age 9 years,

Resp No.2 to 4 are minors under
the Guardianship of their mother
Sangita W/o Keshav Lokhande
Respondent no.1 herein

- 5] Narayan S/o Govind Lokhande
Age : 55 years,

- 6] Dropadabai W/o Narayan Lokhande
Age : 50 years, Occu.: Household,

No.5 and 6 above are
R/o Pimpla, Tq. Ashti, Dist. Beed

- 7] The New India Assurance Co. Ltd.,
Branch Belgum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 to 6 are
the Orig. Claimants
in M.C.A. No.204/99
and Resp. No.7 is
Ori. Resp. No.2 in
M.C.A. No.204/99)

WITH
FIRST APPEAL NO. 1425 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
Age : 49 years, Occu.: Business,
R/o Hindawadi, Tq. And Dist. Belgam,
Belgam (Karnataka State)

.. Appellant
(Orig. Resp. No.1)

VERSUS

- 1] Gena S/o Bhika Lokhande,
Age 58 years, Occu.: Labourer,
R/o Pimpla, Tq. Ashti,
Dist. Beed

- 2] The New India Assurance Co. Ltd.,
Branch Belgaum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 is the
Orig. Claimant)

in M.C.A. No.210/99
and Resp. No.2 is
Ori. Resp.No.2 in
M.C.A. No.210/99)

WITH

FIRST APPEAL NO. 1439 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
Age : 49 years, Occu.: Business,
R/o Hindawadi, Tq. And Dist. Belgam,
Belgam (Karnataka State)

.. Appellant
(Orig. Resp. No.1)

VERSUS

- 1] Gena S/o Bhika Lokhande,
Age 58 years, Occu.: Labourer,
R/o Pimpla, Tq. Ashti,
Dist. Beed
- 2] The New India Assurance Co. Ltd.,
Branch Belgaum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 is the
Orig. Claimant
in M.C.A. No.205/99
and Resp. No.2 is
Ori. Resp.No.2 in
M.C.A. No.205/99)

WITH

FIRST APPEAL NO. 1440 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
Age : 49 years, Occu.: Business,
R/o Hindawadi, Tq. And Dist. Belgam,
Belgam (Karnataka State)

.. Appellant
(Orig. Resp. No.1)

VERSUS

- 1] Deelip S/o Pandharinath Ulhare,
Age 35 years, Occu.: Agri. and Labourer,
R/o Pimpla, Tq. Ashti,
Dist. Beed

- 2] The New India Assurance Co. Ltd.,
Branch Belgaum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 is the
Orig. Claimant
in M.C.A. No.221/99
and Resp. No.2 is
Ori. Resp.No.2 in
M.C.A. No.221/99)

AND

FIRST APPEAL NO. 1441 OF 2004

Husensaheb S/o Merasaheb Mudalgi,
Age : 49 years, Occu.: Business,
R/o Hindawadi, Tq. And Dist. Belgam,
Belgam (Karnataka State)

.. Appellant
(Orig. Resp. No.1)

VERSUS

- 1] Watsalabai W/o Ramdas Lokhande,
Age 42 years, Occu.: Household,
R/o Pimpla, Tq. Ashti,
Dist. Beed

- 2] Rohidas S/o Ramdas Lokhande,
Age 21 years, Occu.: Labour

- 3] Usha D/o Ramdas Lokhande,
Age 19 years, Occu.: Household

Resp.No.2 and 3 are R/o Pimpla,
Tq. Ashti, Dist. Beed

- 4] The New India Assurance Co. Ltd.,
Branch Belgaum, Through Branch
Manager, New India Assurance Co.
Ltd., Br. Jalna Road, Beed

.. Respondents
(Resp. No.1 to 3 are
the Orig. Claimants
in M.C.A. No.211/99
and Resp. No.4 is
Ori. Resp. No.2 in
M.C.A. No.211/99)

Mr. Sunil Kulkarni, Advocate for appellants in all appeals
Mr. A.K. Gawali, Advocate for respondent no.1 (FA/1426/2004 and FA/1427/2007, FA/1439/2004) and for respondent nos. 1 to 4 (FA/1428/2004) and for respondent nos.1 and 2 (FA/1441/2004)

Mr. N.B. Suryawanshi, Advocate for respondent no.1 (FA/1440/2004 and CA/10465/2006)

Mr. Mandar Deshmukh, Advocate i/b. Mr. S.G. Chapalgaonkar, Advocate for the respondent no.4 (FA/1426/2004 and FA/1427/2004 and for respondent no.7 (FA/1428/2004) and for respondent no.2 (FA/1425/2004, FA/1439/2004, FA/1440/2004)

None present for respondent nos.2 and 3 though served in FA/1426/2004 and FA/1427/2004

None present for respondent nos.5 and 6 though served in FA/1428/2004

CORAM : M.T. JOSHI, J.

DATE : 09/01/2015

ORAL JUDGMENT :

1. Heard both sides.
2. All the present appeals have arisen out of the common award passed by the learned Member of the Motor Accident Claims Tribunal arising out of the same accident.
3. The present appellant is the owner of the goods vehicle (tipper) involved in the accident. The accident took place on 28/2/1999 in the morning of village Borgal on Belgaon-Chikodi road in Karnataka State. Twenty families of the labours were being carried by the said truck. It was the case of the respective claimants in

the motor accident claim petition that the accident has occurred due to the rash and negligent driving of the truck. In the said accident, 7 persons have died. Therefore, the respective claim petitions came to be filed.

4. The present appellant as well as the other respondents, including the present respondent – The New India Assurance Company Ltd. has contested the petitions. The main contention of the respondent no.4 – insurer was that the deceased were travelling as gratuitous passengers in a goods vehicle in breach of the terms and conditions of the policy of insurance. In that view, though the learned Tribunal came to the conclusion that the accident has occurred due to the rash and negligent driving of the truck, finding that either the passenger or even the labourers, as claimed by the claimants i.e. respective respondents would not be covered by the policy of insurance it being only Act Policy, the compensation in respective cases was awarded only from the present appellant while the claim petitions were dismissed against respondent – The New India Assurance Co. Ltd. without any order as to costs.

5. Learned counsel for the appellant Mr. Sunil Kulkarni submitted that it was the case of the respondents that the deceased were travelling as labours, the learned Member of the Motor Accident Claims Tribunal ought to have granted compensation albeit as provided by the Workmen's Compensation Act. On the other hand, Mr. Mandar Deshmukh i/b. Mr. S.G. Chapalgaonkar appearing for the respondent / insurer submitted that policy of insurance was proved to be only an Act Policy. The insurer is not statutorily obliged to insure the workmen for compensation even under the Workmen's Compensation Act. In the circumstances, when the risk of even the labours was not covered, the insurer cannot be directed to indemnify the owner i.e. the present appellant in payment of compensation.

6. Mr. Amol Gawali, learned counsel for the respective claimants in the claim petitions submitted that the Tribunal ought to have directed the insurer to indemnify the owner since the deceased were labours being carried in the goods truck.

7. Upon considering the submissions from both the

sides, following points arise for my determination :-

I) Whether the respondent – insurer was jointly and severally liable to pay compensation to the respective claimants alongwith the present appellant ?

My finding to the said point is in the negative. The first appeals are therefore dismissed without any order as to costs for the reasons to follow.

R E A S O N S

8. While the respective claimants came with a case that all the 20 families in the goods truck were being carried as the labours, out of which 7 have died, the respondent – insurer submitted that these persons were gratuitous passengers in the goods vehicle. The present appellant has also pleaded that the deceased were the labours. Oral evidence from the side of the respondent claimant themselves would show that these persons were not even engaged by the present appellant but by one contractor to whom the truck was allotted. The policy of insurance at Exhibit 58 and schedule of the same at Exhibit 72 would show that the policy was only an Act

Policy i.e. covering only the statutory liability of the owner of the truck in payment of compensation. The learned Member of the Tribunal has taken into consideration the then provisions of section 140 of the Motor Vehicles Act and the entire case law on the subject and came to the correct conclusion that there is no statutory compulsion for covering the risk of the workmen by the insurer at the time of accepting the contract of insurance. In that view of the matter, no fault can be found with the impugned awards.

9. At this stage, Mr. Gawali submits that in all the cases, the present Court has permitted the respective claimants to withdraw the deposit made by the appellant as per the provisions. At the time of filing of the appeals, some of the claimants have withdrawn the amount, however, some of the claimants have not approached for withdrawal of the same. He therefore submits that permission to withdraw the said amount to those respective claimants may be granted.

10. There is no hitch in granting permission to withdraw the amount. In the result the following order:-

11. The first appeals are hereby dismissed without any order as to costs. The claimants i.e. respective respondents in each of the first appeals would be at liberty to withdraw the statutory amount deposited by the appellants in case the same is not withdrawn by them.

12. Civil Application no.10465 of 2006 in First Appeal no. 1440 of 2004 seeking withdrawal of amount also stands disposed of.

Sd/-
[M.T. JOSHI]
JUDGE

arp/