IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1808 OF 2015
WITH
CIVIL APPLICATION NO. 8344 OF 2015

The National Insurance Co. Ltd. .. Appellant

Versus

Posali Sherma Gavit & Ors. .. Respondents

Mr. A.B. Kadethankar, Advocate for the appellant.
Mr. L.V. Sangit, Advocate for respondent No.1 to 3.
Mr. P.P. Khandagale, Advocate for respondent No.4.

CORAM : A.M. BADAR,J.
DATED : 24.11.2015

P.C. :-

1. By this appeal, respondent No.2-insurance company before the learned Motor Accident Claims Tribunal, Dhule is challenging judgment and award dated 01.04.2015, passed in M.A.C.P. No.139 of 2011, whereby it is directed to pay compensation of Rs.7.03 lakhs to the claimants with interest at the rate of 8% p.a. by making it liable to pay the same to claimants along with owner of tractor.

2. Brief facts leading to institution of present proceedings can be summarized thus :-

. Appellant was respondent No.2, whereas respondent No.4 was respondent No.2 before learned Tribunal. Claim petition came to be filed under section 166 of the Motor Vehicles Act by present respondent Nos. 1 to 3 for claiming compensation on account of death of Sherma Rupaji Gavit in vehicular accident that took place on 06.10.2010.

. It was case of claimants that deceased-Sherma was loading sand in a trolley attached to tractor bearing Registration No.MH-39-F-0962 owned by respondent No.1 and insured with respondent No.2. All of a sudden, said tractor gave jerk and turned turtled. It caused instantaneous death of Sherma Gavit. Claimants are his dependent legal heirs and they prayed for directing the respondents to pay compensation of Rs.6 lakhs along with interest.

3. Respondent No.1/owner opposed the claim by

contending that construction of well in his agricultural field was going on. For that purpose, sand was being transported. At the time of loading of sand, the tractor moved to and fro causing accident and consequent death of Sherma.

4. Respondent No.2 insurance company (appellant herein) opposed the claim by contending that owner and insurer of the trolley have not been impleaded as respondents. They further contended that driver of the tractor was not holding valid and effective driving licence. The tractor which was insured for agricultural purpose was being used for commercial purpose.

5. Claimant adduced evidence of Mamta Gavit (daughter of deceased). In rebuttal, no evidence was adduced by the respondents.

6. Upon hearing the parties, the learned Tribunal by impugned judgment and award directed the respondents

jointly as well as severally to pay compensation of Rs. 7.03 lakhs with interest at the rate of 8% p.a. from the date of petition.

7. Heard Mr. Kadethankar, learned Counsel for insurance company. According to him, driver of the tractor was not holding valid licence. Contract of insurance covers risk only if tractor is used for agricultural purpose. At the time of accident, the tractor was being used for commercial purpose and as such insurance company was not liable to pay compensation.

8. As against this, the learned counsel for the respondents justified impugned judgment and award by contending that all the relevant issues were carefully considered by the learned Tribunal while giving findings thereon.

9. Undisputedly, the driver of the tractor was holding driving licence to drive tractor. It was

contention on behalf of appellant/insurance company that as trailer was attached to tractor, it makes tractor as transport vehicle. Learned Tribunal on assessment of documentary evidence placed on record came to the conclusion that unladen weight of the tractor is 1860 kg and vehicle having weight up to 7500 kg can be termed as light motor vehicle. The driver of tractor was possessing driving licence to drive light motor vehicle and therefore learned Tribunal has rightly came to the conclusion that the insurance company failed to prove that the driver was not holding valid and effective licence. Reliance was also placed on the verdict of the Hon'ble Apex Court in the case of **Nagashetty Vs. United India Insurance Co., AIR 2001 SC 3356** in which it is held that merely because trailer is attached to tractor cannot be termed as transport vehicle. No infirmity can be found in such finding. Hence, it cannot be said that driver of the tractor was not holding valid and effective driving licence at the time of accident.

10. This now leads this Court to examine whether merely because sand was being transported in the trolley attached to the tractor, breach of terms and conditions of the contract of insurance occurs. On this aspect oral evidence of Mamta Gavit-daugher of deceased is available on record. She has deposed that work of construction of well in the agricultural field of respondent No.1/owner of the tractor was going on and it was for that purpose sand was being transported in the trolley attached to the tractor. Same was the defence of the owner reflected in the written statement. In the wake of this factual backdrop, it cannot be said that the learned Tribunal erred in holding that the tractor was being used for the purpose of agriculture. In absence of evidence on this aspect, this finding cannot be said to be perverse or contrary to the evidence on record.

11. In the result, the learned Tribunal is totally justified in holding that there was no breach of terms and conditions of the policy of insurance.

12. This appeal is limited to issue regarding breach of terms and conditions of the contract of the insurance. As such this Court need not transverse the fact leading to assessment of quantum of compensation. Findings on these issues became final. In the result, appeal fails and same is dismissed with no order as to costs.

13. The amount under award deposited before this Court by appellant/insurance company be transmitted to the Motor Accident Claims Tribunal, Dhule for apportionment and disbursement as per impugned award.

14. In view of disposal of First Appeal, connected Civil Application does not survive and stands disposed of.

[A.M. BADAR,J.]