IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2516 OF 2015

New India Assurance Co. Ltd. Through its Branch Manager, Parbhani, Through its authorized signatory, Asst. Manager, Legal Hub, New India Assurance Co. Ltd., Resident of Aurangabad **APPELLANT**

V E R S U S

1] Shaikh Afsar s/o Sk. Habib, Age 44 years, Occupation Nil. **RESPONDENTS**

2] Shaikh Hafizabee w/o Shaikh Afsar, Age 42 years, Occupation Household

3] Shaikh Imran s/o Shaikh Afsar, Age 21 years, Occupation Education

4] Farheen Begum d/o Shaikh Afsar, Age 19 years, Occupation Nil

All resident of Bhategaon, Taluka Kalamnuri, District Hingoli

5] Sambhaji s/o Namdev narde, AGe Major, Occupation Business, Resident of Malwata, Taluka Basmath, District Hingoli

Mr.Dhananjay P. Deshpande, Advocate for the Appellant

Mr. Pramod C. Mayure, Advocate for Respondent No.1 to 4

Mr. S.B. Ghatol Patil, Advocate for Respondent No.5

CORAM : A.M. BADAR, J.
DATE : 3rd DECEMBER, 2015

ORAL JUDGMENT :

1. This is an appeal under Section 173 of the Motor Vehicles Act filed by appellant – Insurance Company of the tractor and trailer (original respondent no.2) in M.A.C.T. No. 97 of 2011 between the parties whereby the learned Motor Accident Claim Tribunal Parbhani was pleased to allow the petition under Section 166 of the Motor Vehicles Act thereby directing respondent nos.1 and 2 therein to pay jointly as well as severally an amount of Rs.2.80 Lacs alongwith interest @ 7.5% per annum to claimants therein on account of death of Shaikh Iqbal in an accident arising by use of the tractor and trolley. Respondent no.5 herein was respondent no.1 before the Tribunal. He is owner of the tractor as well as trolley involved in the accident. For the sake of convenience, the parties shall be referred to in their original capacity.

2. ***Facts in nutshell necessary for deciding the appeal are thus*** :-

Claim under Section 166 of the Motor Vehicles Act, 1988 was lodged by claimants claiming compensation of Rs.10 Lacs on account of death of Shaikh Iqbal by alleging that they are his legal representatives. It is their case that he was doing labour wok on the tractor bearing registration no .MH-38-B-2322 and the trolley attached thereto bearing registration no. MH-22-B-9237. Respondent no.2 is the owner of these vehicles.

3. According to claimants, on 2nd January, 2011 said tractor and the trailer attached thereto were proceeding towards Hingoli from Majalgaon Sugar Factory with a load of bagasse. Shaikh Iqbal alongwith co-labourers were traveling in the said tractor as a laborer and the accident in question happened because of rash and negligent driving of the driver of the tractor. The tractor jumped over the speed and due to jerk Shaikh Iqbal fell down and run over by wheels of the trolley. He died due to injuries caused in the accident. Other facts are not material as this is an appeal by the Insurance Company limited to imposing liability on it to indeminifier to insured.

4. Respondent no.1 opposed the claim by filing written statement (Exhibit – 29). He admitted ownership of the vehicle involved in the accident. He further admitted that the deceased was traveling in the

trolley as laborer, but contended that the deceased himself was negligent while sitting in the trolley. The accident, as per version of the owner of tractor occurred because of fault of the deceased himself.

5. Respondent no.2 – present appellant opposed the claimant by filing written statement (Exhibit – 17). The Insurance Company denied each and every adverse averments. It denied that accident occurred due to rash and negligent driving of the tractor. According to the Insurance Company the claim is lodged in collusion with the owner of the tractor and trolley. The driver of the tractor was not employee of respondent no.1. The driver was not possessing valid driving licence at the time of incident. Risk of the owner is not covered unless the entire premium is fully paid. The tractor was to be used for the agricultural use only. We may take this averment so as to mean that the Insurance Company wanted to say that the deceased was not an employee of respondent no.1 – owner of the vehicle. Respondent no.2 – Insurance Company further contended that deceased himself was negligent while seating and traveling in the tractor. The deceased was traveling on the head of the tractor which amounts to breach of conditions of the policy.

6. On the basis of rival pleadings, issues were framed. In support of their claim, appellant examined Shaikh Afsar s/o Shaikh Habib – father of the deceased. The learned Tribunal after hearing the parties came to the conclusion that accident happened because of rash and negligent driving of the tractor and trailer. The Insurance Company failed to prove that the driver of the said vehicle was not holding effective driving licence. Accordingly, petition was partly allowed and compensation amount was directed to be paid to claimants by making both respondents liable to pay the same.

7. Heard Shri Dhananjay P. Deshpande, learned counsel for the appellant – Insurance Company. He argued that the pleadings of the claimants goes to show that deceased was sitting on head of the tractor which is not permissible as per provisions of the Motor Vehicles Act. The tractor does not have any sitting capacity for the occupants. He further argued that the learned Tribunal erred in construing the deceased as third party and for this purpose he drew my attention to paragraph nos.15 and 16 of the judgment of the learned Tribunal. According to Shri Deshpande, the learned counsel for the appellant – Insurance Company, tractor and trolley cannot be used for carrying the occupants and risk of the occupant

is not covered because of incurring any liability of the owner. According to Shri Deshpande, the learned counsel for the appellant, the contract of insurance is not covering the risk of even labourers traveling the tractor and the trolley. He, therefore, contended that the appeal deserves to be allowed.

8. Per contra, by drawing my attention to the provisions of Section 2 Sub-Sections 28, 49, 46 and 47, Shri P.C. Mayure, learned counsel for the original claimants submitted that the learned Tribunal is correct in passing liberty on the Insurance Company. He placed reliance on the judgment of the Supreme Court in the matters of ***Natwar Parikh & Co. Ltd. V. State of Karnataka, reported in 2005 AIR (SCW) 4361, Kishan Gopal and another V. Lala and others, reported in 2014 (3) Mh.L.J. 560*** and in the matter of the ***Oriental Insurance Co. Limited V. Hanumantappa and others, reported in II (1992) ACC 575*** and submitted that the tractor was attached to the trailor and as such it is the goods carriage transport vehicle. As such claimants were rightly held to be entitled to compensation from respondents.

9. The learned counsel appearing for owner of the vehicle

supported the argument of Shri P.C. Mayure, learned counsel appearing for respondent nos.1 to 4 and contended that the impugned judgment and order is perfectly in consonance with provisions of law.

10. The issues revolves around the liberty of insurer to pay compensation to claimants who are legal representatives of Shaikh Iqbal. According to the case of claimants, deceased Shaikh Iqbal was traveling on the tractor to which trolley was attached. Pleadings of the claimant shows that when the tractor jumped over the speed breaker, Shaikh Iqbal fell down from the tractor and run over by wheels of the trolly. Stand of the Insurance Company is to the effect that as tractor does not have any carrying capacity for the occupants, claimants are not entitled for compensation from the Insurance Company. This aspect of the matter is dealt with by the learned Tribunal in cryptic manner and that too on the basis of assumptions and presumptions. This being the first appeal, I am constrained to take up the exercise of marshaling the evidence afresh in arriving at mode and manner happening of the accident causing death of Shaikh Iqbal.

11. The only evidence available on record on this aspect is that of

Shaikh Afsar, father of the deceased. He is rustic villager residing at Bhategaon and obviously an uneducated person. He was not an eye witness in the incident in question. On the basis of information gathered, he deposed that the deceased was traveling in the tractor bearing registration no. MH-38-B-2322 attached with trolley bearing registration no. MH-22-B-9237 and that the deceased felled down when tractor jumped over the speed breaker. The question which falls for consideration is whether the deceased was sitting on the tractor or on the trolley attached thereto. In cross-examination, Shaikh Afsar has came with a version that deceased Shaikh Iqbal and two co-labourers were sitting in the trolley when the accident in question happened. This witness categorically denied the suggestion that the deceased was sitting on the head of the tractor when the incident had happened. It is not explicate from the rustic villager to know about anything about the consequences of traveling on head of the tractor as well as in the trolley. In cross-examination by the Insurance Company, this witness had made it clear that the deceased was sitting in the trolley at the time of happening of the incident. I see no reason to disable this version in respect of the accident coming on record from cross-examination of the witness by the Insurance Company itself. Therefore, I hold that the accident happened when deceased Shaikh Iqbail was traveling in the trolley loaded with bagasse while it was attached to the tractor in question.

12. There is another angle to look at the matter. Witnesses to the road traffic accident are not under control of claimants. In the case in hand, victim of the accident succumbed to death. His legal representatives were not eye witnesses to the accident. In such situation, when legal representatives of the deceased proves the accident, then burden shifts on owner of the vehicle and he is duty bound to discharge that burden by adducing necessary evidence disclosing that the accident did not happen in the mode and manner in which claimants are speaking about it. In this case, driver of the offending vehicle was under control of the Insurance Company. He was not examined. Therefore evidence coming on record from the mouth of applicant no.1 – Shaikh Afsar needs to be accepted for holding that the accident happened when the deceased was traveling in the trolley loaded with the bagasse. The deceased engaged as labourer on the said motor vehicle which was carrying the goods and he died in the accident arising out of and in the course of his employment as labourer.

13. Now let us examine whether the motor vehicle involved in the

accident in question can be construed as goods carriage vehicle. This exercise required to be undertaken because one will have to determine liberty of the Insurance Company to pay compensation. Section 146 of the Motor Vehicles Act, 1988 mandates owner of the motor vehicle to insure it with third party risk. Section 147 of the Motor Vehicles Act, 1988 deals with requirement of policies and limits of liability. At this juncture, it is opposite to reproduce provisions of Section 147 of the Motor Vehicles Act, 1988, which reads under :-

"***147. Requirements of policies and limits of liability.***

1. *In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which--*

    a. *is issued by a person who is an authorised insurer; and*

    b. *insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)--*

i. *Against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*

ii. *Against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place:*

Provided that a policy shall not be required-

i. *to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, (8 of 1923.) in respect of the death of, or bodily injury to, any such employee--*

a. Engaged in driving the vehicle, or

b. If it is a public service vehicle engaged as a conductor of the vehicle or in examining tickets on the vehicle, or

c. If it is a goods carriage, being carried in the vehicle, or

ii. To cover any contractual liability.

(2) Subject to the proviso to sub-section (1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, up to the following limits, namely:--

a. save as provided in clause (b), the amount of liability incurred;

b. in respect of damage to any property of a third party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect for the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provisions of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5)Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

Bare perusal of provisions of this Section makes it clear that when the vehicle is goods carriage vehicle, the owner thereof is duty bound to insure it so as to cover risk of owner of goods as well as his authorized representatives. Similarly, proviso clause of this Section mandates that risk of employees of the owner is required to be covered statutorily, so far as it relates to liability under the Employees Compensation Act, 1923.

14. Now let us turn to definition clause that is of Section 2 of the Motor Vehicles Act, 1988. Section 2 Sub-Section 28, Section 2 Sub-Section 44, Section 2 Sub-Section 46 and Section 2 Sub-Section 47 thereto defines terms Motor Vehicle tractor, trailer and transport vehicle, as under :-

> *“Section 2 (28) -"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty-five cubic centimetres]*
>
> *Section 2 (44) - "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;*
>
> *Section 2 (46) - "trailer" means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle;*
>
> *Section 2 (47) - "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle”*

15. The question as to whether the tractor attached with the trolleys can be termed as goods carriage and consequently a transport vehicle falls for consideration of the Honourable Supreme Court in the matter of ***Natwar Parikh & Co. Ltd. V. State of Karnataka, reported in 2005 AIR (SCW) 4361*** (supra). In paragraph no.24 of this Judgment, following is the law laid down by the Honourable Supreme Court of this aspect, which runs as under :-

> *24. Section 2 (28) is a comprehensive definition of the words "motor vehicle". Although, a "trailer" is separately defined under Section 2 (46) to mean any vehicle drawn or intended to be drawn by motor vehicle, it is still included into the definition of the words "motor vehicle" under Section 2 (28). Similarly, the word "tractor" is defined in Section 2 (44) to mean a motor vehicle which is not itself constructed to carry any load. Therefore, the words "motor vehicle" have been defined in the comprehensive sense by the legislature. Therefore, we have to read the words "motor vehicle" in the broadest possible sense keeping in mind that the Act has been enacted in order to keep control over motor vehicles, transport vehicles etc. A combined reading of the aforestated definitions under Section 2, reproduced hereinabove, shows that the definition of "motor vehicle" includes any mechanically propelled vehicle apt for use upon roads irrespective of the source of power and it includes a trailer. Therefore, even though a trailer is drawn by a motor vehicle, it by itself being a motor vehicle, the tractor-trailer would constitute a "goods carriage" under Section 2 (14) and consequently, a "transport vehicle" under Section 2 (47). The test to be applied in such a case is whether the vehicle is proposed to be used for transporting goods from one place to another. When a vehicle is so altered or prepared that it becomes apt for use for transporting goods, it can be stated that it is adapted for the carriage of goods. Applying the above test, we are of the view that the*

> *tractor-trailer in the present case falls under Section 2 (14) as a "goods carriage" and consequently, it falls under the definition of "transport vehicle" under Section 2 (47) of the M.V. Act, 1988.*

As held by the Honourable Supreme Court, the tractor with trailer therefore would be construed of goods carriage. Section 2 (14) and Section 2 (47) of the Motor Vehicles Act reads as under :-

> *"**Section 2 (14)** - "goods carriage" means any motor vehicle constructed or adapted or use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods."*

> *"**Section 2 (47)** - "transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle."*

. Once it is held that the tractor to which the trolley is attached constitutes a goods carriage and transport vehicle then risk of labourers on such vehicle is required to be covered statutorily even in an act only policy. On this aspect, it is necessary to quote observations of decision of Karnataka High Court in the case of ***The Oriental Insurance co.Limited V. Hanumantappa and others*** (supra). Relevant portion of paragraph no.7 thereof reads thus :-

" As held earlier, as Tractor-trailor is a "goods vehicle" in view of the Full Bench decision, it is clear that under an "Act Policy' the Insurance Company concerned is liable to pay compensation in respect of death of or bodily inury to persons, who are coolies or employees, who are travelling in a tractor-trailer to the extent provided for in Sub-section (2) of Section 95 of the Act and the liability is restricted to the compensation payable under the provisions of the Workmen's Compensation Act, to the employee or his dependents as the case may be. Further, according to Sub-section (2) of Section 95 of the Act, the liability of the Insurance company is limited to 6 employees other than driver. Therefore, we hold that in respect of tractor-trailer also the Insurance Company is liable to pay compensation in respect of death of or bodily inury to employees carried in the tractor-trailer, subject to the maximum of six and the liability is limited to the compensation payable under the provisions of the Workmen's Compensation *Act*."

16. Similar issue was for consideration of the Honourable Supreme Court in the matter of ***Kishan Gopal and another Vs. Lala and others (supra)***. In that matter, deceased boy was going in the tractor-trolley and because of rash and negligent driving of that vehicle, he fell down and succumbed to the injuries. In that matter, the Honourable

Supreme Court has held that the Insurance Company is liable to pay compensation to legal representatives of deceased. In the case in hand, undisputedly the tractor as well as trolley attached thereto was insured with appellant – Insurance Company. The Insurance Policy is at Exh.41. Same seems to be agricultural package policy. The motor vehicles covered in this policy are tractor as well as trailer. Therefore, proper interpretation of provisions of Section 147 of the Motor Vehicles Act, 1988 leaves no doubt in my mind to hold that deceased being employee of owner of the tractor and trailer, respondent – Insurance Company is required to indemnify on account of death of Shaikh Iqbal. In view of this, appeal devoid of any substance and hence the following order :-

O R D E R

a] Appeal is dismissed with no order as to costs.

b] Needless to mention that original claimants / respondent nos.1 and 2 herein are permitted to withdraw the amount of compensation in terms of judgment and award of the learned Tribunal.

In view disposal of the First Appeal, Civil Application No.11793 of 2015 stands disposed of.

(A.M. BADAR)
JUDGE

srm/03/12/15