IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 114 OF 2005.

The New India Assurance Co. Ltd.
Through its Authorized Signatory,
Divisional Manager, Mr. Srikant Baliram Aney
age 51 years, Occ. Service.
Aurangabad Div. Aurangabad.

.. APPELLANT
Original Opponent No2.

VERSUS

1] Laxmibai w/o. Bhanudas Bansode,
Age 49 years, occ. Labourer.

2] Bhanudas Santram Bansode
Age 54 years, Occ. Labourer.

3] Kishor Dnyanoba Khakre,
Age 27 years, Occ.Agri.,

All R/o. Malegaon (Kd)
Tq. Ahmedpur, Dist. Latur.

.. RESPONDENTS/
Original Applicants 1 and 2
and Opponent No.1.

Mr. Dhananjay Deshpande, Advocate for appellant
Mr S.S. Halkude, Advocate for respondent Nos. 1 and 2.
Mr. J.R. Patil, Advocate for respondent No.3.

WITH
CROSS OBJECTION STAMP NUMBER 8365 of 2005
in FIRST APPEAL NO. 114 of 2005

1] Laxmibai w/o. Bhanudas Bansode,
Age 49 years, occ. Labourer.

2] Bhanudas Santram Bansode
Age 54 years, Occ. Labourer.

Both R/o. Malegaon (Kd)
Tq. Ahmedpur, Dist. Latur. **.. CROSS APPELLANTS./ ORI.CLAIMANTS 1 AND 2.**

VERSUS

1] The New India Assurance Co. Ltd.
Through its Authorized Signatory,
Divisional Manager, Mr. Srikant Baliram Aney
age 51 years, Occ. Service.
Aurangabad Div. Aurangabad. **Cross Respondent/ Original Opponent No.2.**

2] Kishor Dnyanoba Khakre,
Age 27 years, Occ.Agri.,
R/o. Malegaon (Kd)
Tq. Ahmedpur, Dist. Latur. **Cross-respondent Original Opponent No.1.**

Mr. S.S. Halkude, Advocate for cross appellants/original claimants.
Mr. Dhananjay Deshpande, Advocate for respondent No.1
Mr. J.R. Patil, Advocate for respondent No.2.

. . . .

CORAM : A.M. BADAR, J.
DATE : 16th DECEMBER,2015.

ORAL JUDGMENT :-

1] This first appeal under section 173 of the Motor Vehicle Act,1988 is filed by the original respondent No.2 – Insurance company of the tractor, bearing Registration No. MH-24/D-252 and trolley bearing Registration No. MH-24/E-259, challenging the judgment and award dated 18th August, 2004, passed by the learned MACT, Udgir, Camp at Ahmedpur in

MACT NO. 76 of 2002 between the parties, thereby directing respondent No.2 Insurance company, alongwith owner of the tractor and trolley to pay compensation of Rs. 250000/-, on account of death of Sayas Bhanudas Bansode, caused in the vehicular accident. Respondent No.3 Kishor Khakre, was respondent No.1 before the learned Tribunal. He is the owner of the tractor and trolley involved in the accident. For the sake of convenience parties shall be referred to in their original capacity.

2] Facts in brief giving rise to the present appeal are thus :-

[a] Claimants are parents of deceased Sayas, who at the time of accident was of the age of 21 years. According to claimants, Sayas was working as a Labourer in the field of Dnyanoba Sheshrao Khakre. He was not allotted any specific work. He used to do labour work as per the say of Dnyanoba Khakre, who was employer of the deceased Sayas. The employer used to pay wages of Rs. 100 per day to deceased Sayas.

[b] It is case of claimants that on 21.3.2000, deceased Sayas and other labourers, namely, Sham Kasbe and Uttam Shelke, were employed by Dnyanoba Khakre for watering mango plants in the field. On that day, at about 1.00 to 1.30 p.m., deceased Sayas and other labourers filled water in the iron tank kept in the trolley and proceeded towards field of Dnyanoba. The trolley was attached to the tractor. It is case of the claimants that deceased Sayas was sitting on the left side, whereas, Shyam Kasbe and Uttam Shelke were sitting on the right side of that trolley. That tractor and trolley was driven rashly and negligently by respondent No.1 Kishor

Khakre/owner. Because of rash and negligent driving of respondent No.1 owner-cum-driver of that motor vehicle, the trolley turned turtle. Sayas fell down towards left side and sustained injuries. He ultimately succumbed to the injuries suffered in that accident. According to claimants, the tractor and trolley were owned by respondent No.1 and insured with respondent No.2 insurance company. The deceased was earning Rs. 3,000/- p.m. and as such, they laid claim of Rs. 3 Lakhs under section 166 of the Motor Vehicles Act.

3] The claim came to be opposed by respondent No.1 Kishor Khakre, owner and driver of the tractor and trolley, by filing written statement at Exhibit 25. In para.5 of his written statement, respondent No.1 admitted that he is owner of that tractor as well as trolley involved in the accident. He further contended that deceased Sayas was engaged for watering trees in the field of Dnyanoba. Respondent No.1 Kishor further contended that on the own his own accord, Sayas sat in the trolley and due to his own wrong he fell down and sustained injuries. Respondent No.1 Kishor denied that he had driven the tractor and trolley in rash and negligent manner and in excessive speed. Respondent No.2 Insurance company opposed the claim by filing written statement Exh.22 by contending that it is not liable for payment of compensation to claimants as there was breach of terms and conditions of the contract of insurance. It further contended that the accident occurred at a private place and not at public place. According to the Insurance company, driver of the tractor was not having valid and effective driving licence, the tractor was used for commercial purpose though it was insured only for agricultural purpose. The Insurance company denied all adverse averments and contended that it is not liable to pay compensation to claimant.

4] On the basis of the rival pleadings, issues were framed and parties went for trial. After hearing parties, the learned Tribunal by the impugned judgment and award came to the conclusion that the accident happened because of rash and negligent driving of the tractor and trolley by Respondent No.1 Kishor. The tribunal further held that the accident occurred at a public place. It further held that the third party including owner of the goods or his authorized representative carried in the vehicle comes in the definition of third party. It has further held that deceased Sayas was not travelling in the said tractor for fare or reward or otherwise, but he was authorized by the owner of the tractor to carry water to supply it to the mango plants. With this, the learned Tribunal held that both respondents are liable to pay compensation to claimants. Accordingly, compensation of Rs.4.33 Lakhs was assessed and it is held that as the claimants have restricted the claim to Rs. 3 Lakhs, they are entitled for that much compensation. After deducting Rs. 50,000/- awarded to claimants on account of no-fault liability, the learned Tribunal as such, finally awarded Rs. 2.50 Lakhs with interest @ 9% p.a. from the date of filing of the application.

5] Heard Shri Deshpande, learned counsel appearing for the Insurance company. He vehemently argued that pleadings of claimants themselves show that deceased Sayas was an employee of Dyanoba Khakre.

He was not employee of the original respondent No.1 Kishor Khakre – owner of the motor vehicle involved in the accident. Therefore, by reling on ruling in the matter of ***Sanjeev Kumar Samrat Vs. National Insurance Company Ltd, AIR 2013 SC 1125*** Shri Deshpande contended that risk of the deceased was not at all covered by policy of insurance and, therefore, learned Tribunal erred in making the appellant insurance company liable to pay compensation.

6] As against this, Shri Halkude, learned counsel for the respondent Nos. 1 and 2/original claimants (appellants in cross objection), by pointing out the observations of the learned Tribunal in para.8 of the impugned judgment submitted that the learned Tribunal has categorically held that at the time of the accident, deceased Sayas was engaged by Dnyanoba Khakre and, therefore, Insurance company is rightly made liable t pay compensation. In support of his cross objection, Shri Halkude, relied upon judgment of the Supreme Court in the matter of "**Nagappa Vs. Gurudayal Singh**, ***2002 AIR SCW 5348***, and contended that when the report of the Investigating Officer can be considered as claim petition, then, even if the claim is restricted, the Tribunal is required to grant just compensation. The learned Tribunal was not justified in awarding compensation of Rs. 3 Lakhs, merely because claimants have restricted the claim.

7] Shri Patil, learned counsel for the respondent No.3/owner of the tractor and trolley by pointing out to para.10 of the impugned judgment submitted that tractor was insured for agricultural purpose and it was carrying water for watering mango trees/plants in the field. As such, it can not be said that there was breach of terms and conditions of the contract of Insurance. By pointing out the definitions of public place, defined in section 2(34) of the Motor Vehicle Act, Shri Patil contended that the spot panchanama shows that the accident happened on the boundary of the field and any place to which public have right to access is a public place. Therefore, it can not be said that there were breach of terms and conditions of the contract. He further drew my attention to the explanation to Section 147 of the Motor Vehicle Act, and contended that it can not be said that accident happened at private place and, therefore, insurance company is not liable to pay compensation.

8] I have gone through the record and proceedings, including oral as well as documentary evidence placed on record. Claimants have examined claimant N.2 Bhanudas Bansode, whereas, respondents have chosen not to adduce any evidence. In tune with their pleadings, in para.2 of his deposition, claimant No.2 Bhanudas has deposed that his son Sayas was working with Dnyanoba Khakare as labourer. Claimant Bhanudas further deposed that his son Sayas used to get daily wages of Rs. 100/ per day from Dnyanoba for doing labour work in the field. This version of Bhanudas, which is perfectly in consonance with his pleadings goes to show that deceased Sayas was in employment of Dnyanoba Khakare. Undisputedly, he died because of vehicular accident while he was travelling in the trolley bearing Registration No. MH-24/E259, which was attached to tractor bearing registration No. MH-24/D-252, owned and driven by respondent No.1 Kishor.

Pleading of the claimants as well as evidence of claimant No.1 Bhanudas shows that while respondent Kishor/owner was driving the tractor, Sayas was sitting on the left side of the trolley attached to that tractor and because of rash and negligent driving of respondent No.1 Kishor/owner, the trolley in which the water tank was placed, turned turtle causing death of Sayas.

9] This evidence, brought on record by claimants goes to show that deceased Sayas was not employed by respondent No.1 Kishor Khakre/owner, but he was employed by Dnyanoba Khakre. Respondent No.1 Kishor Khakre, was the owner of the tractor as well as trolley involved in the accident, causing death of Sayas. Even if Kishor/owner may be joint in residence with his father Dnyanoba, that fact will not have any consequence so far as the legal liability is concerned.

10] The certificate of insurance, at Exh.42, of the tractor as well as goods show that said tractor as well as trolley was insured by Act only policy for use of agricultural purpose. The risk of only driver was covered by Act only policy. The terms, “tractor”and “trolley” are defined by Section 2(44) as well as 2(46) of the Motor Vehicle Act, 1988. They read thus :-

> **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;
>
> **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;

11] Bare perusal of these definitions of tractor and trolley goes to show that the tractor is not constructed to carry any load, whereas, the trolley is a vehicle intended to be drawn by another motor vehicle. The tractor attached with trailer as such, can be used for transporting goods.

12] Now, let us examine, whether, risk of the employee of Dnyanoba Khakare, namely Sayas, is covered by the contract or insurance of tractor and trolley owned by respondent No.1 Kishor. At this juncture, it needs to be noted that Section 146 of the Motor Vehicle Act, mandates compulsory insurance of motor vehicles. Section 147 of the said Act, reveals that requirement of polices, element of liability. It reads thus :-

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, including owner of the goods or his authorised representative carried in the vehicle] 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 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.

Explanation. —For the removal of doubts, it is hereby declared that the death of or bodily injury to any person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(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.

13] Section 147(1)(b)(i) as such, makes it clear that so far as goods carrying vehicle is concerned, owner thereof is statutorily obliged to insure the said vehicle so as to cover risk of the owner of goods or his authorized representative carried in the vehicle. In the case in hand, as per the case made out by claimants themselves, deceased Sayas was neither owner of the goods which were being transported in the tractor or trolley nor he was authorized representative of the owner of goods sought to be transported in tractor/trolley. As proved by evidence of claimants themselves, deceased Sayas was an employee of field owner Dnyanoba Khakre. Said Dnyanoba was not owner of the tractor /trolley involved in the accident. That motor vehicle was owned by respondent No.1 Kishor Khakre. Even if Dnyanoba and Kishor were joint in residents, deceased Sayas as proved before the tribunal, was an employee of Dnyanoba. At the same time, relationship between Dnyanoba and Kishor is of no consequence, in order to interfere and adjudicate upon legal liability of payment of compensation in respect of death of Sayas in the vehicular accident. Certificate of insurance at Exh.42, of tractor and trolley owned by respondent No.1 shows that by this Act only policy, risk of only one driver was covered. Deceased Sayas, as stated earlier, was travelling in the said tractor/trolley unauthorizedly as per the stand taken by respondent No.2 Kishor. In the matter of ***Sanjivkumar Samrat (supra***) it is held that policy only covers employees of the insured, either employed or engaged by him in goods carriage. In explicit terms, the Supreme court has made it clear that act only policy does not cover any other kind of employee and, therefore, someone who travels not being authorized agent in place of owner of the goods and claims to be employee of the owner of goods, cannot be covered by the statutory policy. As such, risk of Sayas was not covered by the contract of insurance. However, learned Tribunal, by misconstruing the provisions of law came to the conclusion that deceased Sayas was not travelling in the tractor for fare or reward or otherwise, but he was authorized by the owner of the tractor to carry water to supply it to mango plants. Learned Tribunal missed the pleadings as well as evidence of the parties which is showing that deceased Sayas was not employee of respondent No.1 Kishor. There is no evidence on record that respondent No.1 Kishor had authorized deceased Sayas to travel in the tractor-trolley. On the contrary, even if there was any such authorization, it would be of no consequence to fasten liability on the insurance company. As such, directions of the learned Tribunal that appellant/respondent No.2 is liable to pay amount of compensation to claimants on account of death of Sayas, can not be upheld.

14] Now, let us examine merits of the cros objection of original claimants/respondent Nos. 1 and 2. It is seen from the impugned judgment and award that the learned Tribunal rightly assessed compensation payable to claimants at Rs. 4.33 Lakhs, but observes thus in para.16 of the judgment :-

> "16. …....... However, the claimants themselves have restricted their claim to Rs. 3 Lakhs only. In such situation, one could not dare to say that it is abnormal or excessive claim. Hence, I am of the opinion that demand of claim of Rs. 3 Lakhs in all, is neither excessive nor abnormal but it is just, apt and proper."

15] Accordingly, compensation of Rs. 3 Lakhs as claimed by claimants was awarded to claimants. At this juncture, it needs to be noted that the Motor Vehicle Act, 1988 statutorily enjoins a duty on the Tribunal to award just and reasonable compensation to victims of vehicular accident. In the matter of "Nagappa Vs.Gugudayal" (supra) relied upon by learned counsel for the respondent Nos. 1 and 2/original claimants, Honourable Supreme Court has held that the award needs to be just and reasonable and as such, it can exceed the amount claimed by the claimants, if evidence on record justifies such award As such, the learned Tribunal erred in awarding compensation of Rs. 3 Lakhs only when it came to the conclusion that because of death of Sayas, claimants were entitled for Rs. 4.33 Lakhs towards compensation.

16] In view of the foregoing discussion, I proceed to pass the following order :-

[a] First Appeal No. 114 of 2005 is allowed.

[b] The impugned judgment and award is modified by setting aside the direction of the learned Tribunal to the appellant/Insurance company to pay compensation alongwith interest on account of death of Sayas Bhanudas Bansode. Claim petition as against the appellant/original respondent No.2 Insurance company is dismissed.

[c] Cross objection Stamp No. 8365 of 2005 is allowed. Original respondent No.1 Kishor Khakare is directed to pay compensation of Rs. 4,33,000/- (Rupees Four Lakh Thirty Three Thousand Only) to the claimants which shall be inclusive of the no fault liability, alongwith interest @ 9% p.a. from the date of the claim petition till realization of the entire amount. Rest of the award is confirmed.

[d] Amount, if any, deposited by the appellant/Insurance company be refunded to it.

[e] In the circumstances of the case, there shall be no orders as to costs.

[A.M. BADAR, J]

grt/-