

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**FIRST APPEAL NO. 1721 OF 2012
WITH CA/11052/2012 IN FA/1721/2012**

**UNITED INDIA INSURANCE CO. LTD THR DIVISIONAL MANAGER
VERSUS
KANTI BHARAT PAWARA AND ORS**

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Advocate for Appellant : Mr. Kulkarni Sudhir V.
Advocate for Respondents 1 to 6: Mr. S. S. Patil
Advocate for Respondent 7 : Mr. A. S. Savle

CORAM : S. V. GANGAPURWALA, J.

DATE : 1st September, 2015

PER COURT :

1. The present respondents had filed claim petition for compensation under section 166 of the Motor Vehicles Act, seeking compensation on account of death of one Bharat. The application for compensation is allowed by the Tribunal. Aggrieved thereby, the insurance company has filed the present appeal.

2. Mr. Kulkarni, the learned counsel for the appellant insurance company submits that it is a clear case of breach of policy. The insurance was in respect of commercial vehicle. Gratuitous passenger was travelling in the said commercial vehicle. Deceased Bharat was gratuitous passenger and the insurance company would not be liable to pay compensation for such gratuitous passenger. Learned counsel relies on the written statement filed by it before the Tribunal. The learned counsel also relies on the evidence adduced. Learned counsel also submits that exorbitant compensation is granted. There is no evidence to show that the

deceased was earning Rs.3,000/- per month.

3. Mr. Patil and Mr. Savale learned counsel for respective respondents submit that the deceased was travelling as labour employed for loading and unloading of sand. The same would be covered under the policy.

4. With the assistance of the learned counsel, I have gone through the judgment and record and proceedings.

5. It is not disputed that if the deceased was a labour travelling in the said vehicle, then he would be covered by the policy and the same was not breach of policy. Bone of contention of appellants is that the deceased was gratuitous passenger. The tribunal has considered the evidence on record. The claimants have deposed that the deceased was labour employed for loading and unloading the sand. the same is plausible finding.

6. Complaint Exh. 23 so also Exh.24, the spot panchanama show that the vehicle was loaded with sand. There is no contra evidence on record. Even the owner has not disputed the fact that the deceased was labour employed by him for loading and unloading the sand. Considering the complaint, spot panchanama and the oral evidence, the tribunal came to the conclusion that the deceased was labour employed for loading and unloading the sand.

7. The deceased was labour. In absence of proof of income Rs.3,000/- per month has been rightly considered. There are almost six claimants, still 1/3 amount towards personal expenses has been deducted. The Court properly considered the said aspects.

8. Considering the above, the tribunal has rightly passed the order, holding the present appellant and the owner, jointly and severally liable to pay compensation amount. In the light of that, the appeal is dismissed. No costs.

9. In view of disposal the appeal, Civil application also stands disposed of.

(S. V. GANGAPURWALA, J.)

JPC