IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2957 OF 2013
WITH
CIVIL APPLICATION NO. 14795 OF 2013

Rangrao Yashwantrao Jadhav .. Appellant

Versus

Sukhashimalabai Ramratan Jadhav
and Others .. Respondents

Shri Amit Mukhedkar h/f Shri Inand V. Patil Indrale, Advocate for the Appellant.
Shri S. M. VIbhute, Advocate for the Respondent No. 1.
Respondent No. 2 served.
Shri Dhananjay Deshpande, Advocate for the Respondent No. 3.

WITH
FIRST APPEAL NO. 583 OF 2014

New India Assurance Co Ltd.,
Branch Manager, Latur,
Through its authorized signatory,
Sr. Div. Manager, Legal Hub,
Aurangabad. .. Appellant

Versus

Sukhashimalabai Ramratan Jadhav
and Others .. Respondents

Shri Dhananjay P. Deshpande, Advocate for the Appellant.
Shri S. B. Gastgar, Advocate for the Respondent No. 1.

CORAM : S. V. GANGAPURWALA, J.
DATE : 31ST AUGUST, 2015.

PER COURT :

1. With the consent of the learned counsel for the respective parties, appeals are heard finally. Record and Proceedings is also received.

2. First Appeal No. 583 of 2014, is filed by the Insurance Company challenging the judgment and award passed by the tribunal, fastening the liability upon the Insurance Company to jointly and severally pay the compensation amount alongwith the owner and driver of the vehicle.

3. First Appeal No. 2957 of 2013 is filed by the father of the deceased for apportionment of the amount, as the claim of the father is rejected.

4. Mr. Deshpande, the learned counsel for the Insurance Company submits that, the deceased was travelling in the goods vehicle. There is no evidence on record that, he was travelling with goods. The owner of the vehicle who was also driving the vehicle has denied the said fact. He has also denied the accident. The learned counsel submits that, in the F. I. R. various persons were named, none of the other persons who are alive are examined. In view of the specific denial of the fact that, deceased was traveling with the goods heavy burden lay

upon the claimants to prove the same. The best witnesses have been withheld, adverse inference needs to be drawn. However, the tribunal only on surmises and conjectures has held that, the deceased was traveling with the goods. The appreciation of evidence has not been properly done.

5. Mr. Mukhedkar, the learned counsel for the appellant i.e. the father of the deceased submits that, the claim of the father has been negated only on the ground that, he is a Class-II heir and is not entitled for compensation. The evidence in this regard has not been considered. The father was also dependent on the deceased. The father is infirm. Even the widow of the deceased has admitted this fact.

6. I have also heard Mr. Gastgar and Mr. Vibhute, the learned counsel appearing for the claimant / widow in respective appeals.

7. I have considered the submissions and the record.

8. On record the complaint / F. I. R., spot inspection report etc. has been filed. The F. I. R. clearly discloses the name of the deceased so also further discloses various gunny bags and grocery items. The complaint **Exh. 45** itself is filed by one of the person traveling in the said vehicle namely Tulsiram. He has stated that, the villagers from his village sell their agricultural produce at Udgir.

Many other villagers were traveling in the said tempo. Spot punchnama **Exh. 49** shows that, in the said tempo there were gunny bags of various kinds of grocery including Tur, Soyabean, Wheat and Jawar. The tribunal has observed that, different persons were traveling and were transporting the goods for sale. Even the witness of the Insurance Company is examined who in unequivocal words has stated that, if the persons are traveling with the goods then, they are covered. He has also stated that, no investigation has been made by the Insurance Company. The claimant has also deposed about the factum of deceased going with the goods for sale of the said goods. The evidence has been appreciated including the documentary evidence. No illegality has been committed in the same.

9. As far as the aspect of apportionment is concerned the widow in her evidence has categorically admitted that, father of the deceased i.e. her father in law is also entitled to receive the compensation. It is also the case of the father that, he was residing with the deceased. The age of the father also supports the fact that, the father would be infirm. Deceased himself was 50 years of age.

10. Considering all these aspects of the matter, the evidence of the claimant herself, I am inclined to award 20% of the amount of compensation awarded to the father. The Insurance Company has deposited an amount of Rs. 7,15,678/- (Seven Lacs Fifteen Thousand Six Hundred and Seventy Eight Only) in this Court towards the entire

compensation amount including ‘no fault liability’ amount which is already withdrawn by the parties.

11. In light of that, I pass the following order -

ORDER

I] The appellant Rangrao Yashwantrao Jadhav is entitled to withdraw 20% of the amount deposited by the Insurance Company (with accrued interest if any) and the claimant i.e the widow Sukhashimalabai Wd/o Ramratan Jadhav is entitled to withdraw 80% of the amount deposited by the Insurance Company (with accrued interest if any).

II] The appeal bearing First Appeal No. 583 of 2014 filed by the Insurance Company is dismissed and the appeal bearing First Appeal No. 2957 of 2013 is partly allowed as stated above.

12. First appeals are accordingly disposed of. Civil application also stand disposed of.

[S. V. GANGAPURWALA, J.]

sam/Aug. 15