IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 613 OF 2012

1. Smt. Laxmibai W/o Yadavrao Gadade,
Age : 43 years, Occu : Hosewife,
R/o Kherda, Tq. & Dist. : Hingoli

2. Shivaji S/o Yadavrao Gadade,
Age : 19 years, Occu : Education,
R/o as above .. Appellants

Versus

1. Gopalrao S/o Gyanbarao gadade,
Age: 44 years, Occu : Agri,
(Owner of Tractor MH 38, B 1670)
R/o Kherda, Tq. & Dist. : Hingoli

2. Bajaj Allianz General Insurance Company Ltd.,
Through its Branch Manager,
G E Plaza, Airport Road, Yerwada,
Pune – 411006 (Insurer of Tractor)

3. Gulab S/o Gangadharrao Gadade,
Age : 39 years, Occu : Agri,
R/o Sawangi (Bhutnar), Tq. : Kalamnuri,
Dist. : Hingoli
(Owner of trolley bearing No. MH 38, C527)

4. United India Insurance Co. Ltd.,
Through its Branch Manager,
Dayawan Complex, Station Road,
Parbhani, Tq. & Dist. Parbhani
(Insurer of trolley) .. Respondents

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Shri P.S.Agrawal,Adv. For appellants
Shri S.G.Chapalgaonkar,Adv. For respondent no.2

Shri A.B.Gatne,Adv. For respondent no.4.

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CORAM : S.V.GANGAPURWALA,J.
RESERVED ON : 30TH SEPTEMBER,2015
PRONOUNCED ON : 16TH NOVEMBER 2015

ORDER :-

1] The present appellants had filed application for compensation under the provisions of the Workmen's Compensation Act, on account of the death of deceased Yadavrao.

2] Mr. Agrawal, the learned counsel submits that, the insurance company of the tractor i.e. respondent No. 2 could not have been exonerated. According to the learned counsel the tractor in question was registered as a commercial vehicle and so also, insured as commercial vehicle. The commercial vehicle comes in Class “D” as per the Motor Tariff and for a tractor being used in a commercial vehicles, trolleys are not required to be insured separately. The cover for the tractor and the trolley is identical. The learned counsel submits that, the Commissioner failed to consider statutory liability of the insurance company to cover the workmen employed by the owner of the tractor. The learned counsel relies on Section 147 (1) and 147(2) of the Motor Vehicles Act, to substantiate his contention. The learned counsel submits that, the insurance company can not be absolved for its liability if, the workman or the owner of the tractor is travelling in a trolley alongwith the goods. The learned counsel relies on the judgment of the learned Single Judge of the Madhya Pradesh High Court, in the case of **National Insurance Company V/s. Rainki Bai and Others,** reported in **A. I. R. 1998 M. P. 112.** The learned counsel further submits that, the liability of the insurance company under the Workmen's Compensation Act, is extended to the workmen if, the vehicle is insured for the said purpose. The learned counsel relies on the judgment of the Apex Court, in a case of **National Insurance Company Ltd. V/s. Prembai Patel and Others,** reported in **A. I. R. 2005 (S. C.) 2337.** The learned counsel further relies on the judgment of the Division Bench of the Allahabad High Court, in a case of **New India Assurance Co. Ltd. V/s. Smt. Usha Devi (Kumari)** reported in **2013 AAC 327 (ALL).** The learned counsel submits that, even if, two persons were in the tractor during the course of their employment to bring the sugar-cane and at that time the death of the employee takes place the insurance company would still be liable.

3] The learned counsel also relies on the judgment of the learned Single Judge of this Court, in the case of **United India Insurance Co. Ltd. V/s. Janabai W/o Govind Rathod,** reported in **2008 (1) Bom. C. R. 649,** to submit that, if the trolley is attached to the tractor and even if the trolley is not insured the same would not make any difference and the owner and the insurer of the truck would still be liable.

4] Mr. Chapalgaonkar, the learned counsel for the respondent No.2 submits that the contract of the insurance company will have to be considered, sitting capacity is zero, no additional premium is paid for the labour. The premium is paid only to the extent of the driver of the vehicle. According to the learned counsel, even the trolley was insured by different insurance company and was owned by a different person than the owner of the tractor. The learned counsel submits that, the parties would be governed by the contract of insurance. The learned counsel relies on the judgment of the Apex Court in the case of **Oriental Insurance Company Ltd. V/s. Brij Mohan and Others** reported in **A. I. R. 2007 S. C. 1971 (1), so**

also, the judgment of the learned Single Judge of this Court in a case of United India Insurance Co. Ltd. V/s. Anubai Gopichand Thakare and Others reported **in 2008 (1) Mh. L. J. 73.**

5] Mr. Gatne, the learned counsel appears for respondent No. 4 and submits that, the deceased was not the employee of the owner of the trailer, as such, the respondent No. 4 has been rightly exonerated.

6] I have considered the submissions canvassed by learned counsel for respective parties. Provisions of Section 147 (1) and 147 (2) read as 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 -
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> (a) is issued by a person who is an authorised insurer; and
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> (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 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.

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), policy of insurance referred to in sub-section 91) 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. “

7] It is not disputed that the, tractor is owned by respondent No. 1 and insured by the respondent No. 2 whereas trailer which was attached to the tractor is owned by respondent No. 3 and insured by the respondent No. 4. There also can not be any dispute with the proposition that the parties would be governed by the terms of the contract of insurance.

8] The contract of insurance i.e. the insurance policy depicts that the legal liability is covered to the extent of owner, driver and for operation / maintenance for one person. The sitting capacity of the tractor is stated as zero.

9] The insurance company i.e. respondent No. 2 has been exonerated from its liability. The claim has also been dismissed against respondent Nos. 3 and 4. The dismissal of claim against respondent Nos. 3 and 4 cannot be a subject matter of debate as the deceased was not the workman of respondent No. 3 interalia no question would arise of the liability of respondent Nos. 3 and 4.

10] The only question is with regard to liability of the respondent No. 2. The Commissioner, Workmen's Compensation has exonerated respondent No. 2 from its liability to pay compensation amount.

11] The Commissioner has held that the deceased was labour and employee of respondent no.1 and has died during the course of employment. It is also a matter of fact that the tractor is owned by respondent no.1 and is insured with the respondent no.2. The deceased was sitting in the trolley attached to the tractor. The said trolley was owned by respondent no.3. The Commissioner has exonerated the insurance company i.e. respondent no.2 only on the ground that Yadavrao worked as a labourer and loaded the trolley by Soyabean bags. This type of work would not come under the head of operation/maintenance and that the insurance policy does not cover the risk of labourer under the Workmen's Compensation Act.

12] The tractor in question owned by the respondent no.1 is insured as a commercial vehicle - Class D. The counsel for the appellant has produced on record the tariff for miscellaneous and special types of vehicles which lays down that trailers of the special type of vehicle included under this Section are not to be insured separately. The cover of the vehicle and the trailer must be identical. The use of the tractor is not restricted to agricultural use but it is a commercial vehicle. The insurance policy also depicts the same as such the trailer can be attached to the tractor even if it is presumed that the policy is act only policy. The deceased was an employee of respondent no.1 and the death of the deceased occurred during the course of and out of employment, then, only because extra premium is not paid, liability of the insurance company cannot be exonerated. The Apex Court in a case of National Insurance Company V/s Prembai referred supra has observed as under :

> "15] Though the aforesaid decision has been rendered on Section 95(2) of the Motor Vehicles Act, 1939 but the principle underlying therein will be fully applicable here also. It is thus clear that in case the owner of the vehicle wants the liability of the insurance company in respect of death of or bodily injury to any such employee as is described in clauses (a) or (b) or (c)of proviso (I) to Section 147(1)(b) should not be restricted to that under the Workmen's Act but should be more or unlimited, he

> must take such a policy by making payment of extra premium and the policy should also contain a clause to that effect. However, where the policy mentions "a policy for Act Liability" or "Act Liability", the liability of the insurance company qua the employees as aforesaid would not be unlimited but would be limited to that arising under the Workmen's Act."

13] The Apex Court has specifically held that where the policy mentions a policy for Act liability or Act liability, the liability of the insurance company qua the employees as aforesaid would not be unlimited, but would be to that arising under the Workmen's Compensation Act. Mr.Chapalgaonkar, learned counsel for respondent no.2 insurance company has relied on the judgment of the Apex Court in a case of Oriental Insurance Company V/s Brij Mohan referred supra to submit that if the claimant is not owner or a driver, then he is not covered under the insurance and even if he is a labourer, and he falls down from the trolley attached to the tractor and there is no insurance cover in respect of the trolley, such labourer is not covered. In the said case before the Apex Court, the tractor was meant only for carrying out agricultural work which would not include digging of earth and taking it in trolley to brick kiln and the said respondent as labourer was in the capacity of a mere passenger and not owner or driver. In the present case, the tractor is insured as a commercial vehicle-Class-D. The tractor can be used for commercial purpose to which trolley can be attached and as per general regulations contained in the tariffs for commercial vehicles, it is clear that trailer are special types of vehicles included and are not required to be insured separately. The cover of the vehicle and the trailer is identical. It would have been another thing if tractor would have been registered and insured for agricultural work only. But it was insured as a commercial vehicle and the deceased was a labourer employed by respondent no.1 to load and unload Soyabean bags which were placed in the trolley attached to the tractor. Considering the judgment of the Apex Court in a case of National Insurance Company V/s Prembai referred supra, the statutory liability of the insurance company i.e. respondent no.2 qua the deceased employee would be limited to that arising under the Workmen's Compensation Act.

14] In the result, the appeal is allowed. The order of the Commissioner, Workmen's Compensation is modified as under :

15] The respondent nos. 1 and 2 Bajaj Allianz General Insurance Company Ltd. Are jointly and severally liable to pay compensation amount of Rs.2,49,435/- to the appellant no.1 alongwith interest at the rate of Rs.12% p.a. from the date of petition till realisation.

16] Respondent no.1 is directed to pay 50% penalty on the amount of compensation and 12% p.a. interest thereon from the date of accident till realisation of amount. Claim Petition against respondent nos.3 and 4 stands dismissed. Claim Petition of appellant no.2 stands dismissed.

[S.V.GANGAPURWALA,J.]

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