

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1403 OF 2014
WITH CA/5936/2014 IN FA/1403/2014

UNITED INDIA INSURANCE COMPANY LTD.
VERSUS
SUNANDA PRABHAKAR SHELKE AND OTHERS

...
Advocate for Appellant : Chapalgaonkar S.G.
Advocate for Respondents : Rane Girish S. Adv. For R/1 To 5.
...

CORAM : S.V.GANGAPURWALA,J.

DATED : 12TH OCTOBER, 2015

ORDER :-

The present respondents filed application for compensation on account of death of the deceased Prabhakar. The same is partly allowed. Aggrieved thereby, the insurance company has assailed the said judgment.

2] Mr.Chapalgaonkar, learned counsel for the appellant strenuously contends that the involvement of the vehicle itself was denied by the insurance company. There is no independent proof of accident having taken place. The case of the respondent claimant is that the vehicle turned turtle. There is no evidence of the involvement of the vehicle. The story put forth by the claimants cannot be believed and relied. The alleged accident is said to have taken place on 4/5/2012. The death of the deceased took place on 25/5/2012 and said incident is reported to the police on 10/6/2012. It was stated in the claim petition that the deceased was travelling in jeep which is registered as commercial vehicle under act only policy.

The learned counsel submits that no independent witness has been examined by the claimant to prove the accident. The accident is reported after one month, no spot panchanama exists, nor further evidence of enquiry has been placed on record. The owner and the driver though made parties have not led any evidence. According to the learned counsel, the tribunal has wrongly held that the vehicle in question was involved in the accident.

3] Mr.Rane, learned counsel for the claimants supports the order and submits that it is only after the death of the deceased and after performing his last rites, the factum of accident was reported. The claimants have led their evidence. The said factum of accident is not denied by the driver of the vehicle who is also the owner of the vehicle. According to the learned counsel, respondents have not led any evidence.

4] With the assistance of learned counsel, I have gone through judgment and record and proceeding. I have gone through the evidence and other documents as provided by the learned counsel for the appellant.

5] The owner and the driver of the jeep in question is party to the claim petition. However, according to him, case is rejected against the driver of the said vehicle. The claimants have led their evidence. The factum of accident though denied by respondents, the respondents did not adduce any evidence even insurance company has not led any evidence. It could have examined the driver of the vehicle who is also party to the petition. They have chosen not to do so. The post mortem report suggests that it is case wherein death has been caused in an accident. The cervical spine was required to be operated. The inference need to be drawn against respondent for

not choosing to adduce evidence in that regard. The evidence has been led as to how the claimant's father was taken to the civil hospital, Beed on 5/5/2012, thereafter shifted to the Dhoot hospital, Aurangabad for further treatment. The Court has scanned the evidence and arrived at plausible conclusion.

6] In light of that, First Appeal is dismissed. No costs.

7] The amount deposited by the insurance company is allowed to be withdrawn by the claimants in the proportion as determined by the tribunal.

[S.V.GANGAPURWALA,J.]

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