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

FIRST APPEAL NO. 514 OF 2004

United India Insurance Co. Ltd.
Through its Divisional Manager
and authorized representative
and signatory, Ahmednagar
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... APPELLANT/**
Ahmednagar. **[ORI. OPP. NO. 5]**

V E R S U S

1. Vrushali Vishwanath Sansare
Age : 15 Yrs., Occ. Education
through her guardian -
Vishwanath Manohar Sansare
Age : 42 Yrs., Occ. Agril.,
R/o : Khandgaon, Tq. Rahuri, **.... RESP.NO. 1/**
Dist. Ahmednagar. **[ORI. CLAIMANT]**

2. Patkari Sohil Shaikh
Age : Major, Occ. Business,
R/o : 2543, Parkari Wada,
Nasik City [owner of Truck
No. MH-17-A-5585].

3. The Oriental Insurance Co.Ltd.

Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... RESP.NOS. 2 & 3/**
Ahmednagar. **[ORI. RESP.NOS. 1 & 2]**

4. Mustak Khan Mohamad Khan
Pathan, Age : Major, Occ.
Driver, R/o : Panchshil Nagar,
Ganjmal, Nasik.

5. The Pravara Dudh Viyavasaik
Sangh Ltd., Babhaleshwar,
Tq. Shrirampur, Dist. **.... RESP.NOS. 4 & 5/**
Ahmednagar. **[ORI. RESP.NOS. 3 & 4]**

6. Sampat Changdeo Nagare
Age : Major, Occ. Driver,
R/o : Shipalapur, Tq. Sangamner, **.... RESP.NO. 6/**
Dist.: Ahmednagar. **[ORI. RESP.NO. 6]**

WITH

FIRST APPEAL NO. 515 OF 2004

United India Insurance Co. Ltd.
Through its Divisional Manager
and authorized representative
and signatory, Ahmednagar
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... APPELLANT/**
Ahmednagar. **[ORI. OPP. NO. 5]**

V E R S U S

1. Miss. Kamal Vishwanath Sansare
Age : 27 Yrs., Occ. Education
& Tailoring business,
R/o : Kanadgaon, Tq. Rahuri, **.... RESP.NO. 1/**
Dist. Ahmednagar. **[ORI. CLAIMANT]**

2. Patkari Sohil Shaikh
Age : Major, Occ. Business,
R/o : 2543, Parkari Wada,
Nasik City [owner of Truck
No. MH-17-A-5585].

3. The Oriental Insurance Co.Ltd.
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... RESP.NOS. 2 & 3/**
Ahmednagar. **[ORI. RESP.NOS. 1 & 2]**

4. Mustak Khan Mohamad Khan
Pathan, Age : Major, Occ.
Driver, R/o : Panchshil Nagar,
Ganjmal, Nasik.

5. The Pravara Dudh Viyavasaik
Sangh Ltd., Babhaleshwar,
Tq. Shrirampur, Dist. **.... RESP.NOS. 4 & 5/**
Ahmednagar. **[ORI. RESP.NOS. 3 & 4]**

6. Sampat Changdeo Nagare
Age : Major, Occ. Driver,
R/o : Shipalapur, Tq. Sangamner, **.... RESP.NO. 6/**
Dist.: Ahmednagar. **[ORI. RESP.NO. 6]**

WITH

FIRST APPEAL NO. 516 OF 2004

United India Insurance Co. Ltd.
Through its Divisional Manager
and authorized representative
and signatory, Ahmednagar
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... APPELLANT/**
Ahmednagar. **[ORI. OPP. NO. 5]**

V E R S U S

1. Miss. Vimal Vasant Chokar
Age : 25 Yrs., Occ. Labour,
R/o : Kanadgaon, Tq. Rahuri, **.... RESP.NO. 1/**
Dist. Ahmednagar. **[ORI. CLAIMANT]**

2. Patkari Sohil Shaikh
Age : Major, Occ. Business,
R/o : 2543, Parkari Wada,
Nasik City [owner of Truck
No. MH-17-A-5585].

3. The Oriental Insurance Co.Ltd.

Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. .... **RESP.NOS. 2 & 3/**
Ahmednagar. **[ORI. RESP.NOS. 1 & 2]**

4. Mustak Khan Mohamad Khan
Pathan, Age : Major, Occ.
Driver, R/o : Panchshil Nagar,
Ganjmal, Nasik.

5. The Pravara Dudh Viyavasaik
Sangh Ltd., Babhaleshwar,
Tq. Shrirampur, Dist. .... **RESP.NOS. 4 & 5/**
Ahmednagar. **[ORI. RESP.NOS. 3 & 4]**

6. Sampat Changdeo Nagare
Age : Major, Occ. Driver,
R/o : Shipalapur, Tq. Sangamner, ... **RESP.NO. 6/**
Dist.: Ahmednagar. **[ORI. RESP.NO. 6]**

WITH

FIRST APPEAL NO. 780 OF 2004

United India Insurance Co. Ltd.
Through its Divisional Manager
and authorized representative
and signatory, Ahmednagar
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. .... **APPELLANT/**
Ahmednagar. **[ORI. OPP. NO. 5]**

V E R S U S

1. Shriram Kashinath Kulkarni
Age : 35 Yrs., Occ. Service,
R/o : Guha, Tq. Rahuri, **.... RESP.NO. 1/**
Dist. Ahmednagar. **[ORI. CLAIMANT]**

2. The Pravara Dudh Viyavasaik
Sangh Ltd., Babhaleshwar,
Tq. Shrirampur, Dist. **.... RESP.NO. 2/**
Ahmednagar. **[ORI. OPP. NO. 1]**

3. Patkari Sohil Shaikh
Age : Major, Occ. Business,
R/o : 2543, Parkari Wada,
Nasik City [owner of Truck
No. MH-17-A-5585].

4. The Oriental Insurance Co.Ltd.
Divisional Office, Kisan Kranti
Building, Ahmednagar, Dist. **.... RESP.NOS. 3 & 4/**
Ahmednagar. **[ORI. OPP.NOS. 3 & 4]**

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Mr. A.B.Gatne, Advocate for Appellant.
Mr. V.P.Latange, Advocate for R.No. 1.
Mr. Dhananjay Deshpande, Advocate for R.No. 3.

....

WITH

FIRST APPEAL NO. 813 OF 2002

Oriental Insurance Co. Ltd.
Divisional Office, Ahmednagar
through its authorized
signatory, Divisional Manager, ... **APPELLANT/**
Aurangabad. **[ORI. RESP.NO. 2]**

V E R S U S

1. Miss. Kamal Manohar Sansare
Age : 23 Yrs., Occ. Education
& Tailoring business,
R/o : Kanadgaon, Tq. Rahuri, ... **RESP.NO. 1/**
Dist. Ahmednagar. **[ORI. CLAIMANT]**

2. Patkari Sohil Shaikh
Age : Major, Occ. Business,
R/o : 2543, Parkari Wada,
Nasik City [owner of Truck .... **RESP.NO. 2/**
No. MH-17-A-5585]. **[ORI. RESP.NO. 1]**

3. Mustak Khan Mohamad Khan
Pathan, Age : Major, Occ.
Driver, R/o : Panchshil Nagar, ... **RESP.NO. 3/**
Ganjmal, Nasik. **[ORI. RESP.NO. 3]**

4. The Pravara Dudh Viyavasaik

Sangh Ltd., Babhaleshwar,
Tq. Shrirampur, Dist. **.... RESP.NO. 4/**
Ahmednagar. **[ORI. RESP.NO. 4]**

5. United India Insurance Co.Ltd.
Divisional Office at Kisan Kranti
Building, Station Road, **.... RESP.NO. 5/**
Market Yard, Ahmednagar. **[ORI. RESP.NO. 5]**

6. Sampat Changdeo Nagare
Age : Major, Occ. Driver,
R/o : Shipalapur, Tq. Sangamner, **.... RESP.NO. 6/**
Dist.: Ahmednagar. **[ORI. RESP.NO. 6]**

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Mr. Dhananjay Deshpande, Advocate for Appellant.
Mr. V.P.Latange, Advocate for R.No. 1.
Mr. A.B.Gatne, Advocate for R.No. 5.

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CORAM : T.V.NALAWADE, J.
DATE OF JUDGMENT : 8th FEBRUARY, 2016

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JUDGMENT :

1. First four Appeals are filed by United India Insurance Company Ltd. and the last Appeal is filed by Oriental Insurance Company Ltd. Out of the same accident, claim petitions were filed against the owners of two

offending vehicles and the Insurance companies of two vehicles by the victims of the accident. The Tribunal has allowed the claim petitions partly and the liability to pay compensation is apportioned between the owners of two offending vehicles. First four Appeals are filed by United India Insurance company, as liability is fastened on this company to pay compensation and is asked to indemnify the owner of one offending vehicle. The last Appeal is filed by other insurance company to challenge the quantum of compensation given in respect of injuries sustained by the claimant in the said accident. Learned counsels for both sides are heard.

2. In the first four Appeals, limited point is involved. It is the case of the insurance company that the truck owned by Pravara Dudh Vyavasaik Sangh Ltd., a co-operative milk society, bearing No. MWA-5675 was registered as goods carrier and it was not open to the owner or driver of the vehicle to carry gratuitous or fare paying passengers in the vehicle. It is contended that around 14 persons were travelling, after making payment of fare charges, in this vehicle and as the claims are made in respect of those

persons, the insurance company is not liable to pay any compensation. It is contended that carrying of passengers in milk tanker was in breach of permit and further risk of such persons was not covered under the policy.

3. The owner of milk tanker bearing No. MWA-5675 did not contest the matter. The evidence given by the claimants in four claim petitions which are allowed against the United India Insurance Co. Ltd. shows that specific admissions are given by the claimants that they were travelling in the milk tanker as passengers. Some claimants have given evidence that they were proceeding towards a station for attending last rites of their relative and some claimants have given evidence that they were proceeding to school with their children.

4. In the police papers the vehicle is described as goods carrier. This record is not seriously disputed and there is further mention that in the vehicle No. MWA-5675, 14 passengers were being carried at the relevant time. Copy of cover note in respect of insurance is produced and it also shows that the vehicle was insured as goods carrier.

5. In view of the provisions of Section 147 of the Motor Vehicle Act, 1988, it was not necessary to give cover to the risk of such passengers, passengers travelling in a goods carrier. Thus, in view of the position of law and terms and conditions of the policy, it needs to be held that there was no coverage of insurance in respect of risk to the claimants, the passengers travelling in milk tanker. As there was no coverage of such risk, no liability could have been fastened on the insurance company to pay compensation or indemnify the owner of the aforesaid vehicle. The Tribunal has committed error in fastening the liability on United India insurance company and to that extent Judgments and Awards need to be set aside.

6. In the last proceeding, oriental insurance company has challenged the quantum of compensation. It was injury claim and the claimant was aged about 23 years at the relevant time. The evidence of the claimant shows that there was dislocation of left hip and the injury was grievous in nature. Due to this injury, there is permanent disability to the extent of 10%. The evidence is given that the claimant was doing tailoring work and she was earning ₹ 40/- to

₹ 50/- per day in the past. Bills of medicines are produced to show that she was required to spend ₹ 1250/-. Some amount must have been spent on attendance, conveyance,food,etc.

7. The Tribunal has awarded compensation of ₹ 1.5 Lakh when there was injury of aforesaid nature. Even if it is presumed that she was earning ₹ 50/- per day i.e. ₹ 1500/- per month and the earning capacity has come down by 10%, it can be said that the monthly loss to the claimant is ₹ 150/-. Considering the age of the claimant, 18 can be adopted as multiplier for calculation of loss of income. The amount of loss of future income will be ₹ 32,400/- [150x12x18]. The amount of ₹ 25,000/- can be given under the head of permanent disability and some amount can be given under the head of amount spent on treatment, medicines, conveyance, stay, attendance, etc. Thus, the total compensation amount can not exceed ₹ 70,000/-. The Tribunal has not used any procedure which needs to be adopted for ascertaining the compensation amount. Approximately, the amount of ₹ 1.5 Lakh is given as compensation. This approach can not sustain in law. This Court holds that the amount needs to be reduced to make it

₹ 70,000/- and to that extent this Appeal needs to be allowed.

8. In the result, following order is made.

[i] All the Appeals are allowed.

[ii] In the Appeals filed by United India Insurance Company, the Judgments and Awards of the Tribunal given in respective claims to fasten the liability on United India Insurance Company are hereby set aside. However, apportionment of liability made by the Tribunal between the owners of two offending vehicles is not disturbed. The two owners are held equally liable to pay the compensation. The original claimants will have, however, liberty to proceed against one of the two joint tort feasors to recover entire amount of compensation. In that case, the tort feasor from whom amount is recovered is entitled to recover the share of the liability of the other owner by using the present Award. Accordingly, Judgments and Awards are to be modified. It is to be treated that the claims filed as against United India Insurance Company are dismissed.

[iii] In last Appeal No. 813 of 2002, the Judgment

and Award of the Tribunal is modified to reduce the compensation from ₹ 1.5 Lakh to ₹ 70,000/-. This amount is inclusive of the amount which could have been paid on the principle of no fault. The interest @ 9 % per annum will be payable on this amount from the date of petition till the realization of the entire amount. If the amount is lying with this Court or with Tribunal after making the payment of aforesaid amount to the original claimants, remaining amount is to be returned to the Oriental Insurance Company. If any amount deposited by United India Insurance Company either as a statutory amount required to be deposited for filing Appeal or compensation amount, that amount is to be returned to United India Insurance Company. The amount is to be returned with accrued interest, if any.

[iv] All Civil Applications are disposed of.

[T.V.NALAWADE, J.]