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

FIRST APPEAL NO.: 378 OF 2003

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New India Assurance Co. Ltd.,
Through its Divisional Manager, ,,, **APPELLANT**
(ORI.RESPDT.NO.1)

VERSUS

1. Gayabai W/o Damodhar Sitap,
   Age: 28 years, Occu.: Household,
   R/o. Amrapur, Taluka and
   District Parbhani.

2. Savitrabai W/o Shrirang Sitap,
   Age: 53 years, Occu.: Nil,
   R/o as above.

3. Suresh S/o Damodghar Sitap,
   Age: 12 years,

4. Anusayabai D/o Damodhar Sitap,
   Age: 11 years,

   Nos.3 and 4 Minor, under guardianship
   of their real mother Gayabai W/o
   Damodhar Stiap, Respondent No.1. ... **(ORI.CLAIMANTS)**

5. Vinayak S/o Laxman Wagh,
   Age: Major, Occu. Agri.,
   R/o. Pokharni (Narsinha),
   Tq. & Dist. Parbhani.

6. Madhukar S/o Deorao Wagh,
   Age: Major, Occu.: Driver,
   R?o. as above. ... **RESPONDENTS**
   (ORIG. RESPONDENTS)

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Advocate for the Appellant: Mr. S. G. Chapalgaonkar.
Advocate for Respondent Nos.1 to 4: Mr. J. R. Patil.
Advocate for Respondent No.6: Mr. S. K. Adkine.

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CORAM:- T. V. NALAWADE, J.
DATED:- 21st JANUARY, 2016.

JUDGMENT:

1. The appeal is filed by the Insurance Company against the Judgment and Award of Claim Petition No.279 of 1999 which was pending before Claims Tribunal, Parbhani. As the liability is fastened on Insurance Company and it is asked to indemnify the owner, the decision is challenge. Both the sides are heard.

2. The claim was filed in respect of death fo one Damodhar Sitap. It is the case of the claimants, who are widow and other heirs of Damodhar, that on 13th April, 1999 at about 05.30 p.m. the driver of tractor involved in the accident gave lift to the deceased, as deceased wanted to go towards the side of sugar factory. It is contended that due to rash and negligent driving of the tractor by its driver, the deceased fell in between the tractor and trolley and then the trolley virtually run over the deceased and he died in the accident. Under various heads compensation of Rs.4.5 Lakh was claimed against the owner, driver and insurance company of the tractor and trolley.

3. The insurance company contested the matter by filing written statement. It took various defences and it claimed that there was breach of terms and conditions of policy as the deceased was allowed to travel in the tractor and trolley as a passenger. Other defence with regard to licence of the driver was also taken.

4. Claimant No.2 gave evidence and her evidence is as per the aforesaid contentions. Insurance company examined its officer Takalkar and evidence is given with regard to the nature of insurance and the coverage given. He gave evidence that risk to the driver was covered but risk to other occupants like deceased was not covered under the policy. One employee from R.T.O. office is examined by the insurance company to prove that the said vehicle was registered for its use for agricultural purpose and the sitting capacity of the tractor was only 1 and except the driver nobody was expected to sit on the tractor.

5. The owner gave evidence and he stated that he had not authorised the driver of the tractor to give lift to such persons. He gave evidence that it was informed to him by the driver that without the permission of the driver the deceased had boarded the tractor and he had accidentally

fell from the tractor. Madhukar, driver has given evidence that without taking his permission the deceased had boarded the tractor by using force.

6. The tractor driver had produced the licence and so there was no breach of conditions of policy like absence of licence of the driver.

7. The judgment delivered by the Tribunal shows that it placed reliance on the ratio laid down in the case reported as 2000 AOJ (1) S.O. (New India Assurance Company Ltd. Vs. Satpal Singh and others). As in that case the Apex Court had held that the policy is not expected to exclude the risk in respect of gratuitous passenger, no matter that the vehicle was of any type or of class, the insurance company would be liable to give compensation in such cases also. On this point, learned counsel for the Insurance Company placed reliance on the case reported as ***AIR 2003 SC 607 (New India Assurance Co. Ltd. V/s Asha Rani)*** . In the case of Asha Rani, the Apex Court referred the case of Satpal Singh, cited supra and laid down that the words *"any person"* must be attributed having regard to the context in which they have been used i.e. a third party. The Apex Court has discussed

the provision of section 147 of the Motor Vehicle Act. In the present matter, there is evidence of aforesaid nature. The vehicle involved was tractor and trolley and there was sugarcane in the trolley. However, it is specific case of the claimants that the deceased was present on the tractor as a gratuitous passenger. The evidence of Insurance Company shows that under the policy risk only in respect of the driver was covered. When it was not the case of the claimants that the deceased was present as a labour, employee of the owner, it cannot be said that the risk of the deceased could have been covered even under the provisions of section 147 of the Motor Vehicles Act. Further, in view of the evidence of R.T.O. employee, it was not open to take gratuitous passenger on said vehicle. Thus, the risk in respect of the deceased was not at all covered under the policy and there was no question of fastening liability on the insurance company and asking the insurance company to indemnify the owner.

8. In the result, following order is made:

The appeal is allowed. The judgment and Award delivered against the Insurance Company is hereby set aside. The claim petition filed against the insurance company stands dismissed. The amount, if any, deposited by the iknsurance company is to be returned to it. However, the claimants will be at liberty to go for execution of the Award as against the owner.

(T. V. NALAWADE, J.)

Dated:21/01/2016.
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