

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.566 OF 1994

The New India Assurance Company
Limited, having it's Head Office
at 87, Mahatma Gandhi Road,
Fort, Bombay-400 001 and a Branch
Office at Ahmednagar.

...APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Smt. Kasturbai w/o Dadarado
Tonde, Age:53 years,
Occu.: Household,
R/o. Satewadi, Post- Naigaon,
Tq. Jamkhed, Dist. Ahmednagar,
2. Bhaskar s/o Dadarao Tonde,
Age:33 years, Occu.:Agriculture,
R/o. as above,
3. Sudam S/o Dadarao Tonde,
Age: 30 years, Occupation
and R/o. as above,
4. Harishchandra s/o Dadarao Tonde,
Age: 28 years, Occupation
and R/o. as above,

...RESPONDENTS
(Ori. Claimants)

5. Vasant s/o Kanhuji Meghdambar
Age Major, Occupation-Transport
Business, (Owner of Vehicle)
R/o. Mohori, Tq. Jamkhed,
Dist. Ahmednagar

...RESPONDENT
(Ori. Resp. No.1)

Mr.A.B.Kadethankar, Adv. For Appellant;

Ms.Pooja Deshmukh, Adv. h/for Mr. Uday S.Malte, Adv.
For Resp.Nos.1 to 4;

Mr. A.B.Gatne, Adv. For Resp.No.5.

WITH

**CROSS OBJECTION St.NO.175 OF 1995
IN
FIRST APPEAL NO.566 OF 1994**

The New India Assurance Company
Limited, having it's Head Office
at 87, Mahatma Gandhi Road,
Fort, Bombay-400 001 and a Branch
Office at Ahmednagar.

**...APPLICANT
(Orig. Respondent No.2)**

VERSUS

1. Smt. Kasturbai w/o Dadarado
Tonde, Age:53 years,
Occu.: Household,
R/o. Satewadi, Post- Naigaon,
Tq. Jamkhed, Dist. Ahmednagar,
2. Bhaskar s/o Dadarao Tonde,
Age:33 years, Occu.:Agril.,
R/o. as above,
3. Sudam S/o Dadarao Tonde,
Age: 30 years, Occu.: &
R/o. as above,
4. Harishchandra s/o Dadarao Tonde,
Age: 28 years, Occu.: &
R/o. as above,
5. Vasant s/o Kanhuji Meghdambar
Age Major, Occupation-Transport

**...RESPONDENTS
(Ori. Complainant)**

Business, (Owner of Vehicle)
R/o. Mohori, Tq. Jamkhed,
Dist. Ahmednagar

...RESPONDENT
(Ori. Resp. No.1)

Mr. A.B. Kadethankar, Adv. for Applicant;
Ms. Pooja Deshmukh, Advocate h/f.
Mr. U.S. Malte, Advocate for Respondent Nos.
1 to 4.
Mr. A.B. Gatne, Advocate for Respondent No.5.

WITH

FIRST APPEAL NO.567 OF 1994

The New India Assurance Company
Limited, having it's Head Office
at 87, Mahatma Gandhi Road,
Fort, Bombay-400 001 and a Branch
Office at Ahmednagar.

...APPELLANT
(Orig. Respondent No.3)

VERSUS

1. Satyabhamabai Khema Ghule,
Age:43 years, Occu.:Household,
work, R/o. Kharda, Tq. Jamkhed,
Dist. Ahmednagar,

2. Ramesh s/o Khemaji Ghule,
Age: 26 years, Occu.: Agril,
R/o. As above,

...RESPONDENTS
(Ori. Claimants)

3. Navnath s/o Kanhu Meghdambar,
Age:37 years, Occu.: Driver,
R/o. Mohari, Tq. Jamkhed,
Dist. Ahmednagar,

4. Vasant s/o Kanhuji Meghdambar
Age: Major, Occu.: Business,

R/o. as above.

...RESPONDENTS
(Ori. Res.Nos. 1 & 2)

Mr. A.B. Kadethankar, Adv. for Appellant;
Ms. Pooja Deshmukh, Advocate h/f.
Mr. U.S. Malte, Advocate for Respondent Nos.
1 & 2;
Respondent No.3 duly served;
Mr. A.B. Gatne, Advocate for Respondent No.4.

CORAM : P.R.BORA, J.

RESERVED ON :30th August,2016
PRONOUNCED ON:24th October,2016

JUDGMENT:

1) The aforesaid two appeals are filed by New India Assurance Company Ltd., challenging the common Judgment and Award passed by Motor Accident Claims Tribunal, Ahmednagar (for short, the Tribunal) on 17th December, 1993 in MACP No.173/1991 and MACP No.201/1991.

. Cross-objection is filed in First Appeal No.566/1994, seeking enhancement in the amount of compensation as awarded by the Tribunal in MACP No.201/1991.

2) In view of the fact that the aforesaid two appeals and cross-objection arise out of common Judgment and Award delivered by the Tribunal, common arguments were heard in all these matters and I deem it appropriate to decide these matters by a common reasoning.

3) Heard Shri Kadethankar, learned Counsel appearing for the appellant – insurance company in both the aforesaid appeals; Shri A.B.Gatne, learned counsel appearing for Respondent No.5 in FA No.566/1994 and Respondent No.4 in FA No. 567/1994, who is the owner of the vehicle involved in the accident in question. Shri Uday Malte argued on behalf of the Respondents in Cross-objection.

4) The appellant – insurance company has disputed its liability to indemnify the insured on the ground that the vehicle was a goods vehicle, and as per the terms of insurance policy, insurance company was not liable to cover

the risk of passengers travelling through the insured vehicle and so also not liable to cover the risk of owner of the goods or the other passengers working with him travelling along with the goods in the insured vehicle at the time when the said vehicle met with an accident.

. The aforesaid is the only objection pressed by the appellant – insurance company in exception to the impugned Judgment and Award.

5) Shri Kadethankar, learned Counsel appearing for the appellant – insurance company, submitted that though a specific plea was raised by the insurance company before the Tribunal, disputing its liability to indemnify the insured on the aforesaid ground, the learned Tribunal for erroneous reasons has rejected the contention of the insurance company and has wrongly made the insurance company liable jointly and severally with owner of the offending vehicle. The learned counsel placed his reliance on the following judgments of the Hon'ble Apex court, -

- i) Manager, National Insurance Co.Ltd.
Vs. Saju P.Paul and anr. - 2013 AIR
(SC) 1063;
- ii) National Insurance Co.Ltd. Vs.
Cholleti Bharatamma & Ors. - 2008
AIR (SC) 484;
- iii) New India Assurance Co.Ltd. Vs. Asha
Rani - (2003) 2 SCC 223;
- iv) Ramesh Kumar Vs. National Insurance
Co. Ltd. - AIR 2001 SC 3363;
- v) National Insurance Co. Ltd. Vs
Rattani and Ors. - (2009) 2 SCC 75;

6) Shri Gatne, learned Counsel appearing for the owner of the motor vehicle involved in the alleged accident, supported the impugned Judgment and Award. The learned counsel submitted that the offending tempo was specifically hired for carrying luggage and deceased Dadarao Tonde was travelling in the said tempo as owner of the goods; whereas deceased Khemji Ghule was travelling along with deceased Dadarao to supervise the goods. The learned counsel submitted that since the deceased were

travelling through the offending tempo along with their goods, risk of both of them was fully covered under the insurance policy and the Tribunal has, therefore, rightly held the insurance company jointly and severally liable to pay the amount of compensation to the legal heirs of both the deceased.

7) After having heard the arguments of learned counsel appearing for the respective parties, it is revealed that most of the facts are undisputed. It is not in dispute that the tempo involved in the alleged accident was a 'goods carrier' and deceased Dadarao Tonde and deceased Khemji Ghule were claimed to have been travelling in the said tempo along with their goods. From the material on record, it is further revealed that when the accident had happened along with deceased Dadarao Tonde and Khemji Ghule, there were few more persons travelling through the offending tempo.

8) It is the precise objection raised by the appellant – insurance company that having regard to the provisions of the Motor Vehicles Act, 1988 (for short, the Act of 1988) as it stood prior to amendments brought in the year 1994, the insurance company was not liable to cover the risk of the passengers travelling in goods carriage including the owner of the goods or the persons travelling along with him for the purpose of supervision of the goods.

9) To support his argument, the learned Counsel relied upon the judgments of the Hon'ble Apex court in the case of New India Assurance Co. Ltd. Vs. Asha Rani – (2003) 2 SCC 223. The learned Counsel more particularly referred to paragraph 9 of the said judgment, which reads thus, -

“9. In Satpal case [(2000) 1 SCC 237] the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of

the Motor Vehicles Act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994,

even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative

carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of the goods or his authorised representative on being

carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury."

10) The judgment of the Hon'ble Apex court in the case of Asha Rani (cited supra) has been followed in all the subsequent judgments, wherein the similar issue was involved.

11) In the instant case, it is not in dispute that the accident, in question had happened on 8.2.1991 i.e. before coming into effect of the amendments of 1994. Motor vehicle involved in the accident was admittedly a 'goods carrier'. It is further not in dispute that according to the case of the original claimants themselves deceased Dadarao Tonde was travelling in the tempo as the owner of the goods, whereas deceased Khemji Ghule was travelling along with said Dadarao Tonde to supervise the goods. It is further not in dispute that additionally there

were few other persons travelling through offending tempo when the accident had happened.

12) As stated herein above, it was the specific defence raised by the appellant – insurance company that since the passengers were carried through the offending tempo, which was the goods carrier, the owner of the vehicle has committed the breach of the policy conditions, thereby exonerating the insurance company from its liability to indemnify him. The learned Tribunal though has observed that the passengers for hire or reward could not have been allowed to travel from the offending tempo and insurance policy of the offending vehicle was not covering the risk of such passengers on hire or reward, held the insurance company liable jointly and severally with the driver and owner of the offending tempo observing that in the insurance policy there was no specific condition of restraining even the owner of the goods to travel in the vehicle along with his goods. According

to the learned Counsel for the owner of the vehicle, the Tribunal has rightly made the observations, as above and rightly held the insurance company liable to indemnify the insured. However, in view of the law laid down in the case of Asha Rani (cited supra), the plea so raised on behalf of owner of the vehicle has to be rejected. The learned Tribunal has committed an error in accepting the said plea and thereby holding the insurance company jointly and severally liable with the driver and owner of the offending tempo.

13) The material on record reveal that a plea was raised by the owner of the vehicle that deceased Dadarao Tonde was the owner of the goods, which were being carried through the tempo at the relevant time and deceased Khemji Ghule was the person accompanying him for supervision of the goods and as such, the risk was covered by the insurance policy.

14) In view of the law laid down in the case of Asha Rani (cited supra), the conclusions so recorded by the Tribunal cannot be sustained. As has been held by the Hon'ble Apex court in the case of Asha Rani, the insurance company cannot be held liable for paying the compensation to the legal heirs and/or dependents of deceased owner of the goods or his authorised representative who suffered accidental death while travelling in a Goods-vehicle.

15) For the reasons stated above, both the appeals filed by the insurance company deserve to be allowed. In so far as cross-objection is concerned, no such material has been brought on record by the applicant so as to cause interference in the impugned Judgment and Award. No case is made out by the applicant for enhancing the amount of compensation. The cross-objection being devoid of any merit, deserves to be dismissed. In the result, the following order, -

ORDER

- I) First Appeal Nos.566/1994 and 567 are allowed;
- ii) M.A.C.P.Nos.173/1991 and 201/1991 stand dismissed against the appellant – insurance company;
- iii) It will be open for the appellant – insurance company to recover amount of compensation, if any, paid by it to the original claimants in satisfaction of the Awards passed in the aforesaid claim petitions, from owner of the vehicle along with interest @ 6% p.a.;
- iv) The cross-objection is dismissed.
- v) No order as to costs.

(P . R . BORA)
JUDGE

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Fldr 20.10.16