IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FIRST APPEAL NO. 2 OF 2014

New India Assurance Co. Ltd.,
Branch Manager, Aurangabad,
Through its authorised signatory,
Mr. Sanjiv s/o Ramrao Galsamudre,
Age 50 yrs, Occ. Service-Sr.Div. Manager
New India Assurance Co. Ltd.,
R/o Aurangabad. ...Appellant

Vs.

1. Sau. Kusum Chandrabhan Pakhare,
Age: 41 years, Occ. Labourer,
R/o Pimpri Raja, Tq. & Dist. Aurangabad.

LRs added as per order dtd. 02.11.12

2. Chandrabhan s/o Vitthal Pakhare,
since deceased, through his L.R.s

2A. Ravindra Chandrabhan Pakhare,
Age 19 yrs, Occ. Education.

2B. Prakash Chandrabhan Pakhare,
Age 15 yrs, Occ. Education,

2C. Pradhum Chandrabhan Pakhare,
Age 13 yrs, Occ. Education.

Resp.Nos. 2B & 2C being minors u/g
of their mother, resp. no.1 hereinafter
All R/o Pimpri Raja,
Tq. & Dist. Aurangabad.

3. Santosh s/o Digamber Shinde,
Age: 36 years, Occ. Driver,
R/o Pimpri Raja, Tq. & Dist. Aurangabad.

4. Haribhau s/o Panditrao Dandge,
Age: 40 years, Occ. Owner of the vehicle,
R/o Warud Kazi, Tq. & Dist. Aurangabad.

5. Nizamuddin s/o Allabaksh Shaikh,
Age: 56 years, Occ.Business,
R/o Pimpri Raja, Tq. & Dist. Aurangabad. …Respondents

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Mr. D.P. Deshpande, Advocate for the appellant.
Mr. M.K. Deshpande, Advocate for the respondent nos. 1 to 7.
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CORAM : P.R. BORA, J.

DATE OF RESERVING THE JUDGMENT : 29-11-2016.
DATE OF PRONOUNCING THE JUDGMENT : 20-12-2016.

JUDGMENT:

1. Heard the learned counsel appearing for the respective parties.

2. The present appeal can be disposed of in view of the law laid down by the Hon'ble Apex Court in the case of **Sanjeev Kumar V/s. National Insurance Company Limited and Ors.** reported in **AIR 2013 SC 1125**.

3. In the aforesaid case the issue for consideration before the Supreme Court was, "whether the insurer is obliged under the law to indemnify the owner of a goods vehicle when the employees engaged by the hirer of the vehicle travel with the owner of the goods on the foundation that they should be treated as "employees" covered under the policy issued in accordance with the provisions contained under section 147 of the Motor Vehicles Act, 1988 (for brevity the 'Act').

4. The Hon'ble Apex Court, while delivering the judgment in the said matter has held that, the statutory policy only covers employees of the insured, either employed or engaged by him in a

goods carrier and it does not cover any other kind of employees. In explicit terms, the Hon'ble Apex Court has made it clear that “Act only” policy does not cover any other kind of employees and therefore someone who travels not being authorised agent in place of owner of the goods and claims to be employee of the owner of the goods cannot be covered by the statutory policy.

5. In the instant matter it is not in dispute that the deceased was employed by one Nizamuddin Allabaksh Shaikh respondent no.5 in the present appeal (respondent no.4 in the claim petition). It is further not in dispute that, said Nizamuddin Allabaksh Shaikh had hired the offending tempo from the owner of the said tempo namely Haribhau Panditrao Dandge, respondent no.3 in the claim petition and respondent no.4 in the preset appeal. Admittedly, the offending tempo was hired by said Nizamuddin Allabaksh Shaikh for the purpose of transportation of the sweet limes and the deceased along with few other employees were carried in the said tempo by said Nizamuddin Allabaksh Shaikh for the purpose of plucking sweet limes. The alleged accident, admittedly, happened after the sweet limes so plucked by the deceased and his co-workers were loaded in the said tempo and the tempo was proceeding towards the destination where the sweet limes were to be delivered.

6. Section 147(1) (b) (i) clearly provides that so far as

goods carrying vehicle is concerned, owner thereof is statutorily obliged to insure the said vehicle so as to cover the risk of owner of the goods or his authorised representative carried in the vehicle. In the case in hand, as per the case made out by the claimants themselves, deceased Rahul was neither the owner of the goods which were being transported in the offending tempo nor he was the authorised representative of the owner of the goods sought to be transported in the said tempo. As proved by the evidence of the claimants themselves, deceased Rahul was an employee of Nizamuddin Allabaksh Shaikh, who had hired the said tempo. Said Nizamuddin Allabaksh Shaikh was admittedly not the owner of the tempo involved in the accident. The tempo was owned by Haribhau Panditrao Dandge. Admittedly, deceased Rahul was not employed by said Haribhau Panditrao Dandge, owner of the tempo. It is thus, evident that the risk of deceased was not covered under the policy of insurance pertaining to the offending tempo.

7. The learned tribunal, however, only on the basis of the fact that additional premium was paid by the owner of the tempo to cover the risk of owner cum driver and W.C. risk of seven employees, reached to the conclusion that risk of the deceased was covered by the policy of insurance since deceased was carried in the said tempo as a Labour. The learned tribunal, however, failed in appreciating that, the policy does not cover the risk of all kinds of

employees. The policy only covers risk of the employees of the insured, either employed or engaged by him in a goods carrier and it does not cover the risk of any other kind of employee. The learned tribunal failed in appreciating the pleadings in the petition as well as evidence on record which clearly shows that, deceased Rahul was not an employee of respondent no.4, Haribhau Panditrao Dandge, the owner of the tempo, but was the employee of respondent no.5, Nizamuddin Allabaksh Shaikh, who had hired the said tempo from Haribhau Panditrao Dandge. It is thus, evident that the risk of the deceased was not covered under the policy of insurance.

8. In the aforesaid circumstances, the appellant-insurance company cannot be held liable to indemnify the insured. The tribunal has erred in holding the appellant-insurance company jointly and severally liable to pay the amount of compensation to the claimants. The impugned order to that extent needs to be set aside and is accordingly set aside. Consequently, the claim petition stand dismissed against the appellant-insurance company. The amount, if any, deposited by the appellant-insurance company either in this court or before the tribunal shall be refunded to it with interest accrued, if any. The appeal is allowed in the aforesaid terms. No order as to costs.

mub (**P.R. BORA, J.**)