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

FIRST APPEAL NO.: 343 OF 2005

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United India Insurance Co. Ltd.,
Through it's Divisional Manager
and Authorised Representative
and Signatory, Jalgaon Divisional
Office, Mansing Market, Opp. Atul
Dairy, Jalgaon. ... **APPELLANT**
(ORIG.RESPDT.NO.2)

VERSUS

1, Smt. Sarlabai Gajendra Mahire,
Age: 29 years, Occu.: Household work.

2. Sagar S/o. Gajendra Mahire,
Age: 13 years, Occ. Education.

3. Suraj S/o. Gajendra Mahire,
Age: 11 years, Occu.: Education.

Nos.2 and 3 minor, through guardian
Respondent No.1.

All R/o. Dondaicha, Taluka Sindkheda
District Dhule.

4. Laxman Gangaram Somwanshi,
Age: Adult, Occu. Business,
R/o. Sawai-Mukri Taluka:
Sindkheda, Dist. Dhule. ... **RESPONDENTS**
(NOS.1 TO 3: ORI. PTNRS.
NO.4 ORI.RESPDT.NO.2)

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Mr. A. B. Gatne, Advocate for the Appellant.
Mr. Anand Chawre, Advocate for Respondent Nos.1 to 3.

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CORAM:- T. V. NALAWADE, J.
DATED:- 28th JANUARY, 2016.

JUDGMENT:

1. The appeal is filed against the judgment and Award of Claim Petition No. 945 of 2000 which was pending before Claims Tribunal, Dhule. The Insurance Company has challenged the decision as it is held liable to pay the compensation and indemnify the registered owner of the vehicle. Both the sides are heard.

2. The accident took place on 8th August, 1999 within local jurisdiction of Dhondaicha Police Station. The deceased was driving Jeep No.MH-18/B-970. This vehicle left the road and turned turtle and deceased Gajendra died in the accident. The claim petition was filed by the widow and two minor issues of the deceased.

3. It is the case of the original claimants that the deceased had taken the vehicle from Respondent No.1, registered owner as he wanted to go to his native place and due to friendly relations Respondent No.1 handed over the vehicle to the deceased. It is contended that there was rain and even when the vehicle was being driven in moderate speed, the vehicle skidded and turned turtle. The claim was made against the owner and insurance company of the

jeep. As the quantum is not disputed there is no need to consider contentions with regard to the quantum.

4. The owner filed written statement and contended that the vehicle was insured with the Respondent No.2 at the relevant time and the risk of the deceased was covered under the policy. He admitted that due to his friendly relations the vehicle was handed to the deceased by him.

5. The insurance company contested the matter by contending that the deceased was not employee of the owner and so there has been breach of conditions of policy. The insurance company contended that the accident took place due to the fault of the deceased as he was driving the vehicle rashly and negligently. It was contended that the vehicle was taken without any permission of the registered owner.

6. The widow of the deceased examined herself and her evidence is as per the aforesaid contentions. According to her, the condition of road was not good and as there was rain, the vehicle skidded and the accident took place. The claimants placed reliance on police papers. Copy of F.I.R. shows that Police Officer gave report and he informed that

when the vehicle started skidding brake was applied and due to that vehicle turned turtle. Copy of the spot Panchanama, produced at Exhibit-21, shows that the accident took place due to the rain water and as the vehicle skidded. In F.I.R. the Police Officer had informed that the tyres of the vehicle were not road worthy and due to that the vehicle skidded. However, he had also blamed the deceased for driving the vehicle negligently.

7. The learned counsel for the Appellant submitted that inference can be drawn from aforesaid record that the accident took place only due to negligence of the deceased and so no liability can be fastened on the owner and then on the insurance company of the vehicle. He submitted that the police had recorded some statements, which include statement of widow of the deceased and there is possibility that the vehicle was owned by the deceased and so the risk of the deceased was not covered under the policy. This submissions is not acceptable as the so called police statement was not confronted with the widow of the deceased and on the other hand the owner has not disputed that at the relevant time he was the owner and out of friendship he had given the custody of vehicle to the

deceased. There is nothing in rebuttal and so inference is possible that the accident took place due to poor condition of the tyres, they were not road worthy.

8. The learned counsel for the insurance company submitted that the deceased was not employee of registered owner and so it cannot be said that under the policy risk to him was covered. This submissions is not acceptable. Under the policy and under the provision of Section 147 of the Motor Vehicle Act the risk to the driver, the person on driving seat was covered and the risk in respect of the passengers was covered. In view of this circumstance, it cannot be said that the risk in respect of the deceased was not covered under the policy.

9. The learned counsel for the Appellant placed reliance on some reported cases like (i) ***1995 (4) Bom. C. R. 285 (Panajai Bench) (Shri Chandrakant Parsekar V/s Smt. Rosy Simoes and others),*** (ii) ***2008 ACJ 1441 (Oriental Insurance Co. Ltd. V/s Rajni Devi and others)***, (iii) ***2009 ACJ 2020 (Ningamma and another V/s United India Insurance Co. ltd.)***, and (iv) ***AIR 1977 SC 1248 (1) (Minu B. Mehta and another V/s Balkrishna Ramchandra Nayan and another)***.

10. Learned counsel for the Appellant submitted that when the owner had given the vehicle to the deceased out of friendly relationship the liability cannot be fastened on the owner, if something happens after taking custody of the vehicle from owner, in such circumstances. He placed reliance on the case of *Nigamma and another (cited supra)*. The facts of the reported case were different. The person who had borrowed the vehicle was not the claimant but the pillion rider on the vehicle was the claimant and so the person who had borrowed the vehicle was treated as the owner. It is also observed by the Apex Court that in such cases the liability is on the legal representatives of the deceased to show that deceased himself was not responsible for the accident. There cannot be any dispute over this proposition. It is already observed that in the present matter the risk to the driver and also the occupants of the vehicle was covered in the policy. Present is not the claim of the registered owner and so the observations made by the Apex Court in the case of *Rajni Devi (cited supra)* are not applicable. In the case of *Minu Mehta (cited supra)* there was no proof of negligence but in the present matter there are aforesaid circumstances, the tyres of the vehicle were not road worthy and so there was negligence on the part of the

owner of the vehicle. The case of Bombay High Court Bench at Panaji also involves different facts and in that case also it was held that the person who had taken vehicle gratuitously stands in the shoes of the owner and he becomes liable to pay third party if due to his negligence the accident took place. Thus, on facts, the present case is different. This Court holds that the Tribunal has not committed any error in fastening the liability both on the registered owner and insurance company of the vehicle.

11. In the result, the appeal stands dismissed.

(T. V. NALAWADE, J.)

Dated:28/01/2016.
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