

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

FIRST APPEAL NO. 610 OF 1997

The New India Assurance Co. Ltd.,
through its Senior Divisional Manager,
Shri Syed Khalil s/o Syed Chand,
age major, Occ. Service in Divisional
Office, Adalat Road, Aurangabad
R/o Aurangabad.

..Appellant..
(orig respondent no.2)

VERSUS

1. Smt. Sushilabai w/o Sukhdeo Aswar,
age 28 years, Occ. Household,
R/o Maliwada, Near Daulatabad,
Tq. & Dist. Aurangabad.
2. Ankush s/o Sukheo Aswar,
age 9 years, Occ. Minor,
3. Lalu s/o Sukhdeo Aswar,
age 7 years, Occ. Minor.
4. Arun s/o Sukhdeo Aswar,
age 5 years.

Respondents No2 to 4 are minors
u/g of their mother
Sushilabai Sukhdeo Aswar,
Resp No. 1 r/o Maliwada,
Daulatabad Dist. Aurangabad.

...Respondents..
/orig claimants.

5. Shri Sayed Wahab Syed Akbar,
(Deceased) through his L.Rs.
- 5-a. Mr. Sayed Zuber Sayed Wahab,
age 38 years, Occ. Agri and Business,
R/o Daulatabad, Tq. & Dist. Aurangabad.

- 5-b. Mr. Sayed Juned Sayed Wahab,
age 33 years, Occ. Agri and Business,
R/o Daulatabad Tq. & Dist. Aurangabad.
- 5-c. Mr. Sayed Mohsin Sayed Wahab,
age 30 years, Occ. Agri and Business,
R/o Daulatabad Tq. & Dist. Aurangabad.
- 5-d. Mr. Sayed Mujahed Sayed Wahab,
age 28 years, Occ. Agri and Business,
R/o Daulatabad Tq. & Dist. Aurangabad.

..Respondents...

**WITH
FIRST APPEAL NO.116 OF 2004**

The New India Assurance Company Ltd.,
Divisional Office No.I, Adalat Road,
Aurangabad through its Divisional
Manager, Namdeo Gangaram Mali,
age 45 years, Occ. Service, R/o N-4,
Cidco, Aurangabad. ..Appellant..
(Orig. respondent No.2)

VERSUS

- 1. Roshanbee w/o Shaikh Gaffar,
age 45 years, Occ. Household,
R/o Daulatabad, Tq. & Dist.
Aurangabad.
- 2. Syed Wahab s/o Syed Akbar
(Deceased) through his L.Rs.
- 2-a. Mr. Sayed Zuber Sayed Wahab,
age 38 years, Occ. Agri and Business,
R/o Daulatabad, Tq. & Dist. Aurangabad.
- 2-b. Mr. Sayed Juned Sayed Wahab,
age 33 years, Occ. Agri and Business,
R/o Daultabad Tq. & Dist. Aurangabad.

2-c. Mr. Sayed Mohsin Sayed Wahab,
age 30 years, Occ. Agri and Business,
R/o Daulatabad Tq. & Dist. Aurangabad.

2-d. Mr. Sayed Mujahed Sayed Wahab,
age 28 years, Occ. Agri and Business,
R/o Daulatabad Tq. & Dist. Aurangabad.

..Respondents...

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Advocate for Appellant : Shri M.M. Ambhore.

Advocate for Respondents : Mr A. A. Joshi for
respondents No.1 in FA 116/2004 and Mr.Abhishek
Kulkarni h/f Mr. S.H.Joshi for respondent No.1 to 4 in
FA No.610/1997

Mr R. R. Shaikh For 2(a) to 2(d) in FA 116/2004 and for
respondent No.5 in FA 610/1997

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CORAM : V.K. JADHAV, J.

Dated: April 26, 2016

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COMMON JUDGMENT :-

1. Heard learned counsel for respective parties.
2. Both these appeals can be decided by this common judgment, as same are arising out of one and the same motor vehicular accident.
3. Being aggrieved by the Judgment and Award dated 05.04.1997 in WC No.9 of 1991 and the Judgment and Award dated 18.01.2001 in WC No.6 of 1991 passed by learned Labour Court, Aurangabad, original respondent

No.2-insurer has preferred these two First Appeals.

4. Brief facts, giving rise to the present appeals are as follows :-

(a) On 7.6.1990 deceased Shaikh Sattar was working as usual on the truck bearing registration No.MWD-8762 owned by respondent No.1 as a labour along with other labours. On that day truck was transporting bricks and deceased Shaikh Sattar alongwith other labours sat in the back portion of the truck for unloading said truck at the given destination. At the relevant time, said truck was being driven by deceased Shaikh Salauddin. On way at about 09.00 p.m. said truck met with an accident. Said truck dashed against one S.T. Bus within the limits of village Mitmita. In consequence of which, deceased Shaikh Sattar sustained head injury. He was immediately shifted to Ghati Hospital, where he succumbed to the injuries. Legal representatives of deceased Shaikh Sattar filed WC No. 6 of 1991 before Labour Court, Aurangabad for grant of compensation.

(b) Similarly, legal heirs of another labour who also died in the said accident, namely Sukhdeo Kondiba Aswar also filed W.C. No.9/1991 before Labour Court, Aurangabad for grant of compensation.

(c) Respondent No.1 has strongly resisted both the applications by filing his separate written statements in respective applications. Respondent No.1 has not denied the employer-employee relationship. He has also admitted happening of the accident and death of labours working on his truck at the time of accident. Respondent no.1 has accepted that deceased Sukhdev and deceased Shaikh Sattar met with an accidental death out of and during the course of their employment. According to respondent no.1, the truck involved in the accident is insured with respondent no.2 under the insurance certificate covering the date of accident and therefore, respondent no.2 is liable to pay the compensation.

(d) Respondent no.2-insurer has also strongly resisted both the applications by filing separate written

statements. According to respondent no.2, at the relevant time, the truck was being driven by an incompetent person who was not having valid and effective driving licence. However, respondent no.2 has resisted both the claim petitions on the ground that in all nine persons were travelling in the truck as passengers and therefore, there has been breach of terms and conditions of the policy. Respondent No.2 is not liable to pay compensation along with penalty and interest.

(e) The learned Judge of the Labour court, Aurangabad by impugned Judgment and order dated 18.1.2001 in application WC No.6/1991 which is impugned in First Appeal No. 116 of 2004, partly allowed the said application and awarded compensation of Rs.52,433/- alongwith Rs.10,000/- towards penalty from respondent no.2 with interest @ 6% p.a. on compensation amount from the date of application till passing of the order. Learned Judge of the Labour court, by Judgment and Award dated 05.04.1997 which is impugned in First Appeal No. 610 of 1997, allowed the

application WC No.9/1991 in toto and thereby directed the respondents no. 1 and 2 to pay the compensation as claimed alongwith 50% penalty, plus 12% interest as claimed by the applicants. Being aggrieved by the same, respondent no.2-insurer has preferred two separate appeals i.e. First Appeal No.610/1997 (The New India Assurance Co. Ltd. Vs. Smt. Sushilabai Aswar and others) and First Appeal No.116/2004 (The New India Assurance Co. Ltd. Vs. Roshanbee w/o Shaikh Gaffer and others).

5. Learned counsel for the appellant-insurer submits that, the Labour court has not considered the defence raised by appellant-insurer in its proper perspective. Learned counsel submits that, in all nine persons were travelling in a goods carriage as passengers and therefore, appellant-insurer is not liable to pay compensation. Learned counsel submits that deceased Salauddin was not driving the vehicle truck at the time of accident and some other person was driving the truck at the time of accident. Learned counsel submits that after the accident, said Salauddin found beneath the

bricks and the same was not possible if at all deceased Salauddin was driving the truck. Learned counsel further submits that the Labour Court has erroneously saddled the appellant-insurer with liability to pay the penalty.

6. In order to substantiate his submissions, learned counsel for the appellant places his reliance on following cases :-

1. ***Ved Prakash Garg Vs. Premi Devi and others***, reported in ***AIR 1997 SC 3854***.
2. ***Udhav Rangnathrao Pawar Vs. Sheshrao Ramji Jogdand and anr.***, reported in ***2009 (5) Bom.C.R.523***.

7. Both the learned counsel appearing for original claimants submit that the Labour Court has rightly considered the oral and documentary evidence adduced by the claimants. Learned counsel submits that deceased Shaikh Sattar and deceased Sukhdev were working as labours and they were travelling in the truck in that capacity for unloading the truck at the given

destination. Learned counsel submits that the owner-employer has not disputed the same. Learned counsel submits that deceased Salauddin was driving the vehicle truck at the time of accident and after the accident, crime came to be registered against him in the concerned police station for driving the vehicle truck in rash and negligent manner. Learned counsel submits that even though compensation was due after period of one month from the date of accident, and even though intimation was given by the owner to the appellant-insurer, the compensation amount was not deposited before the Labour Court and the Labour Court has rightly saddled the appellant-insurer with liability to pay the penalty. Learned counsel submits that, no interference is required in the impugned Judgments and Awards and the appeals are liable to be dismissed.

8. Learned counsel for the respondent-owner submits that as per the Insurance Policy, eight persons were permitted to travel in the truck as labours for loading/unloading the said truck and the liability to pay compensation towards said labour is covered by the

policy issued by the appellant-insurer. Learned counsel submits that, in light of oral evidence adduced by respondent/owner coupled with certified copies of police papers, it can be safely concluded that at the time of accident labours along with driver and cleaner of the truck were travelling in the truck and they were not the passengers. Learned counsel submits that even though intimation was given to the appellant-insurer about the accident and even though own damage claim of the vehicle is settled finally by the appellant-insurer, the appellant-insurer has not deposited compensation amount before the Labour Court and therefore, the Labour Court has rightly saddled the appellant-insurer with liability to pay the penalty.

9. The appellant-insurer has examined its Branch Manager before the Labour Court. He has admitted in his cross examination that the Insurance Company has settled the own damage claim of respondent-insured. It also appears from the documents placed before the Labour court that in the police complaint, there is a specific reference that on account of rash and negligent

driving of driver Salauddin, labours sat on the heap of bricks at the back portion of the truck met with an accidental death. Furthermore, respondent no.1-owner has also not disputed the employer-employee relationship and he has also admitted that at the time of accident deceased Sukhdev and deceased Shaikh Sattar were travelling in the truck in the capacity as labours for unloading said truck at the given destination. Learned Judge of the Labour Court has therefore, rightly observed that the appellant-insurer has failed to prove that there was breach of conditions of the policy. Learned Judge of the Labour Court has recorded findings in the negative to the issue that deceased was an unauthorized passenger travelling by the truck involved in the accident. In view of the above discussion, I do not find any fault and the evidence on record clearly indicates that deceased Sattar and deceased Sukhdeo Aswar were travelling in the truck as labours.

10. So far as question of penalty is concerned, learned counsel appearing for the claimants in both the appeals have fairly conceded that the appellant-insurer cannot

be saddled with the liability to pay the penalty. The Supreme Court in case of **Ved Prakash Garg** (*supra*) relied upon by learned counsel for the appellant-insurer held that, claim for compensation payable under Workman's Compensation Act along with interest thereon u/s 4-A (3) have to be paid by the insurer, but so far as the amount of penalty imposed u/s 4-A(3)(B) is concerned, as that is on account of personal fault of the insured not backed by any justifiable cause, the insurer cannot be made liable and has to be paid by the employer himself. In the said case, the Supreme Court further held that, penalty is required to be levied under the provisions of said Act after issuing show cause notice to the employer concerned who will have reasonable opportunity to show cause that on account of some justification on his part, there is delay in making payment of compensation and thus, he is not liable to pay the penalty. It is further observed by the Supreme Court that, if ultimately, the Commissioner after giving reasonable opportunity to the employer to show cause, takes a view that there is no justification for such delay on the part of the insured employer and

because of his unjustified delay and due to his personal fault, he is held responsible for the delay, then penalty would be imposed on him. It has been further held that, so far as penalty amount is concerned, it cannot be said that it automatically flows from the main liability incurred by the insured employer under the said Act.

11. In view of the above observations and the observations made by learned Single Judge of this Court in the case of **Udhav Rangnathrao Pawar** (supra) relied upon by learned counsel for the appellant-insurer, the impugned Judgment and Award dated 05.04.1997 passed in WC No.9 of 1991 directing the appellant-insurer to pay penalty to the extent of 50% and the impugned Judgment and Award dated 18.01.2001 passed in WC No.6 of 1991 directing the appellant-insurer to pay penalty of Rs.10,000/- are liable to be quashed and set aside to that extent only.

12. At this stage, both the learned counsel appearing for respondents/original claimants in respective appeals

make a statement that the respondents/original claimants waive the amount of penalty. In view of this, no purpose would be served in remanding the matter to the Commissioner for issuing show cause notice to the employer concerned and after giving an opportunity of being heard to the respondent-employer, pass an appropriate order with regard to the imposition of penalty.

13. So far as quantum of compensation is concerned, the Labour Court has awarded Just and reasonable compensation and the same is also not disputed by learned counsel appearing for the appellant-insurer. No interference is required in this regard. Accordingly, I pass following order.

ORDER

- I. First Appeal No.610/1997 (The New India Assurance Co. Ltd. Vs. Smt. Sushilabai w/o Sukhdeo Aswar and others) and First Appeal No.116/2004 (The New India Assurance Co. Ltd. Vs. Roshanbee w/o Shaikh Gaffer and others) are hereby partly allowed.

- II. The impugned Judgment and award dated 05.04.1997 passed in WC No.9 of 1991 (Sushilabai Sukhdeo Aswar and others Vs Syed Wahab Syed Akbar and another) to the extent of directing the appellant-insurer to pay penalty to the extent of 50% of amount of compensation and the Judgment and award dated 18.01.2001 passed in WC No.6 of 1991 (Roshanabee Shaikh Gaffar Vs Syed Wahab Syed Akbar an another) to the extent of penalty of Rs.10,000/-, are hereby quashed and set aside.
- III. Rest of the Judgment and awards dated 05.04.1997 and 18.01.2001 passed in WC No.9 of 1991 and WC No.6 of 1991 respectively, stand confirmed.
- IV. In the circumstances, there shall be no order as to costs.
- V. Award be drawn up accordingly.
- VI. In light of the above, the original claimants in both the appeals are permitted to withdraw the amount, if deposited by the appellant-insurer before the Commissioner.
- VII. Both the appeals are disposed of accordingly.

(V.K. JADHAV, J.)

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