IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 202 OF 2015

United India Insurance Company Ltd., Through its Divisional Office, Divisional Manager, Osmanpura, District Aurangabad **APPELLANT**

V E R S U S

1 Anusayabai W/o. Govind Chavan, Aged 50 Years, Occupation Agriculture, Resident of Chabhra Tanda, Post Chabhara Hadgaon, District Nanded

2 Govind S/o. Amarsingh Chavan, Aged 55 Years, Occupation Agriculture, Resident of as above

3 Dhanappa Vishwanath Irshetty, Aged Major, Occupation Business and Owner of Vehicle No. MH/13/R/7448, Resident of Teur, Taluka Akkalkot, District Solapur **RESPONDENTS**

Mr. Sudhir V. Kulkarni, Advocate for the Appellant
None present for the Respondents

CORAM : A.V. NIRGUDE, J.

DATE : 22nd August, 2016

ORAL ORDER :

1. This Appeal filed by the Insurance Company challenging the Judgment and Award dated 25th October, 2012, delivered by the learned Member of Motor Accident Claims Tribunal, Nanded, in M.A.C.T. No. 461 of 2008.

2. Respondent Nos. 1 and 2 were the claimants. Respondent No. 3 was owner of the vehicle. Respondent Nos. 1 and 2 were parents of one Rajesh. The incident in question took place on 29th April, 2008 at about 02.30 p.m. Rajesh boarded vehicle belonging to Respondent No. 3. The vehicle was a goods career. This vehicle met with an accident, in which Rajesh sustained injuries and ultimately succumbed. In the Claim Petition, Respondent Nos.1 and 2 stated that Rajesh boarded the vehicle in question alongwith agricultural produce namely a bundle of Turmeric. It was their case that Rajesh was taking of Turmeric to Basmat for sale etc. Insurance Company took-up a defence that Rajesh had boarded the vehicle as fare paying passenger, and therefore, there occurred a breach of policy condition. The question before the Court thus was, whether Rajesh was carrying the goods as owner of the goods or whether he was a fare paying passenger.

3. The learned Member did not record a finding as to the status of the Rajesh at the time when he boarded the vehicle. He held that even assuming that Rajesh was fare paying passenger, the Insurance Company should pay compensation. In my view, this conclusion is rather erroneous.

The question that is required to be decided is, what was the status of Rajesh when he boarded the vehicle in question.

4. In order to find out answer to this question with the help of the learned counsel for the appellant, I went though the depositions on record. Rajesh's father – Respondent No. 2 Govind entered in the witness-box and deposed that Rajesh had a piece of agricultural land, in which he used to take crops like turmeric etc. On the day of incident, Rajesh took his agricultural produce namely turmeric and loaded it in the vehicle in question. He also boarded the vehicle as owner of the goods. As against this assertion in the examination-in-chief, this witness in cross-examination admitted that the turmeric loaded in the vehicle did not belong to Rajesh but belonged to someone else. On the basis of this admission, the learned counsel for appellant tried to suggest that since the turmeric did not belong to Rajesh by implication and by probability, the insurance company had proved that Rajesh was fare paying passenger.

5. I am not inclined to accept this submission. The witness in examination-in-chief in clear terms stated that Rajesh was carrying the turmeric to *bazar* and for that purpose he had boarded the vehicle. Even if the turmeric did not belong to him, if he had concern with the turmeric, for the purpose of boarding the vehicle he was 'owner' of the goods. In other words, Rajesh could have taken agricultural produce belonging to his friend or other relatives, load it in a goods carrier and then as a responsible person board the vehicle. In such situation Rajesh's position vis-a-vis the driver and owner of the vehicle is nothing less than owner of the goods loaded in the vehicle. In view of this, there could be a clear

finding that Rajesh had boarded the vehicle in question as owner of the goods. As per the terms of policy, owner of the goods carried in goods carrier is permitted to travel in such vehicle and such owner of the goods is protected under the terms of insurance policy. In view of this, appeal should fail. Appeal stands dismissed.

(A.V. NIRGUDE, J.)

srm/22/8/16