

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

FIRST APPEAL NO. 1779 OF 2007

- 1] New India Assurance Company Limited
Having its Head and Registered Office
At New India Assurance Building,
87, M.G. Marg, Fort, Mumbai 1. .. APPELLANT

VERSUS

- 1] Sk. Gulam Rasool s/o Sk. Amir
age about 30 years, occ. Business
R/o Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.
- 2] Niyankhan S/o Sharifkhan Pathan
age 49 years, occ. Owner of vehicle
R/o Amla Wahegaon, Tq. Georai
Dist. Beed.
- 3] Sk. Shagir s/o Sk. Shabir
age 39 years, occ. Driver
R/o as above. .. RESPONDENTS

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Shri S.L.Kulkarni, Adv. For appellants

Shri V.D.Patnoorkar, Adv. For respondent no.1

-2-

Shri S.S.Chapalgaonkar, Adv. For respondent no.2

Shri K.M.Nagarkar, Adv. For respondent no.3.

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WITH

FIRST APPEAL NO. 338/2008

- 1] New India Assurance Company Limited
Having its Head and Registered Office
At New India Assurance Building,
87, M.G. Marg, Fort, Mumbai -1. .. APPELLANT

VERSUS

- 1] Sk. Shabbir s/o Sk. Rahiman
age about 34 years, occ. Business
R/o Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.
- 2] Niyankhan s/o Sharifkhan Pathan
age 49 years, occ. Owner of vehicle
R/o Amla Wahegaon, Tq. Georai
Dist. Beed.
- 3] Sk. Shagir s/o Sk. Shabir
age 39 years, occ. Driver
r/o as above. .. RESPONDENTS

-3-

WITH
FIRST APPEAL NO. 217/2008

- 1] New India Assurance Company Limited
Having its Head and Registered Office
At New India Assurance Building,
87, M.G. Marg, Fort, Mumbai -1 .. APPELLANT

VERSUS

- 1] Sk. Rashid s/o Sk. Rahiman
age 27 years, Occ. Business and Labour
R/o Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.
- 2] Niyatkhani s/o Sharifkhan Pathan
age 49 years, occ. Owner of vehicle
R/o Amla Wahegaon, Tq. Georai
Dist. Aurangabad.
- 3] Sk. Shagir s/ Sk. Shabir
age 39 years, occ. Driver
r/o as above. .. RESPONDENTS

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WITH
FIRST APPEAL NO. 216/2008

- 1] New India Assurance Company Limited

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Having its Head and Registered Office

At New India Assurance Building

87, M.G. Marg, Fort, Mumbai -1

.. APPELLANT

VERSUS

1] Syed Yusuf S/o Syed Ashique

Age about 37 years, occ. Business & labour

R/o Borgaon Sarwani, Tq. Sillod,

Dist. Aurangabad.

2] Niyanatkhan s/o Sharifkhan Pathan

age 49 years, occ. Owner of vehicle

R/o Amla Wahegaon, Tq. Georai

Dist. Beed.

3] Sk. Shagir S/o Sk. Shabir

age 39 years, occ. Driver

R/o as above.

.. RESPONDENTS

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WITH

FIRST APPEAL NO. 213/2008

1] New India Assurance Company Limited

Having its Head and Registered Office

At New India Assurance Building,

87, M.G. Marg, Fort, Mumbai 1

.. APPELLANT

VERSUS

- 1] Anish Shaha s/o Yunus Shaha
age 27 years, occ. Business and Labour
R/o Borgaon Sarwani, Tq. Sillod,
Dist. Aurangabad.
- 2] Niyankhan s/o Sharifkhan Pathan
age 49 years, occ. Owner of vehicle
R/o Amla Wahegaon, Tq. Georai
Dist. Beed.
- 3] Sk. Shagir /so Sk. Shabir
age 39 years, occ. Driver
R/o as above.

.. RESPONDENTS

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Shri S.L.Kulkarni, Adv. For appellants
Shri V.D.Patnoorkar, Adv. For respondent no.1
Shri S.S.Chapalgaonkar, Adv. For respondent no.2
Shri K.M.Nagarkar, Adv. For respondent no.3.

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CORAM : T.V.NALAWADE

DATED : 2ND MARCH, 2016

JUDGMENT :-

The Appeals are filed by insurance company against judgments and awards of claim petitions which were pending before claims tribunal, Aurangabad. All the claims were filed by respective

respondents of the appeals for compensation in respect of injuries sustained by them in motor vehicle accident. Present appeals are filed only on one ground viz., the vehicle involved in the accident was goods carrier and according to insurance company the claimants were travelling in the vehicle as fare paid passengers. Both sides are heard.

2] The accident took place on 26/5/2003. The vehicle involved is Tata 407 vehicle bearing No.MH-23-2832. After the accident, report was given by one of the persons who was present in the vehicle to police that 20-25 persons of his village were taking sheep and goats which were around 40-50 from village to Wadod bazar for selling the sheep and goats in the market. This vehicle turned turtle and all the claimants sustained injuries in the accident. Crime was registered on the basis of this report for offences punishable under Sections 279, 337, 427 of IPC and Section 134 r.w. 177 of Motor Vehicles Act.

3] Record like form AA is produced to show that the vehicle was registered as goods carrier and it was insured with respondent no.2 insurance company. In spot panchanama, there is no mention of sheep and goats, though the report was given that some sheep and goats were also injured. But substantive evidence is given by all the claimants that they were taking their sheep, goats in the vehicle as owner of goods.

4] In the written statement, insurance company had taken defence that the vehicle was not insured and there is no question of liability of insurance company. Another defence was taken that in goods carrier 20-22 persons were travelling as passengers and there has been breach of condition of policy and insurance company cannot be made liable to indemnify the owner.

5] Aforesaid defence was taken by insurance company but no evidence at all is given by insurance company to prove the aforesaid defence. On the record, there is only copy of FIR and there is substantive evidence of the claimants of aforesaid nature. In view of these circumstances, there was no alternative before tribunal than to hold that the claimants were present in the vehicle as owner of goods. The learned counsel for appellant placed reliance on the case reported in **2007 AIR SCW 6665 in the case of Smt.Thokchom Ongoi Sangeeta and another V/s Oriental Insurance Co. Ltd. And Ors.** The Apex Court has laid down that if the passengers are travelling in goods carriage, insurer cannot be held liable to indemnify the owner. There cannot be any dispute over the proposition. Each case is required to be decided on facts and circumstances of that case. In view of the aforesaid circumstances of the present case, this Court holds that there are no merits in the appeals.

6] In the result, all the appeals are dismissed. Statutory amount if any deposited by insurance company at the time of appeal is to be paid to the claimants.

7] In view of disposal of appeals, Civil Applications are disposed of.

(T.V.NALAWADE,J.)

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