IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 400 OF 2002

1. Begumbai w/o Ramdas Torde,
age 48 years, Occ. Household,

2. Balu Ramdas Torde,
age 24 years, Occ. Labour

3. Bhau Ramdas Torde,
age 21 yrs, Occ. Labour,

All r/o Kamathi,
Tq. Shrigonda Dist. Ahmednagar. ..Appellants..
(orig. applicants)

VERSUS

1. The Oriental Insurance Co. Ltd.,
D.O.No.I, Ansal Industrial Estate,
G.T. Kamal Road, Azadpur, Delhi-33.

2. Bhagwansingh Ropsingh,
age 41 years, Occ. Service,
R/o D.B.T.R. Transport,
New Delhi No.7. ..Deleted..

3. Satnamsingh Jogindarsingh,
age major, Occ. Business, R.R.
New Delhi No.7. ..Respondents..

(Res No.1 orig resp
No.1. And Resp 2,3 Orig
resp No.1 and 2)

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Advocate for Appellants : Mr A M Gholap
Advocate for Respondent 1 : Mr A S Deshpande
R/3 Dismissed, R/2 Deleted.

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CORAM : V.K. JADHAV, J.
Dated: April 04, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the Judgment and Award dated 19.6.2001, passed by the Chairman Motor Accident Claims Tribunal, Ahmednagar, the original claimants have preferred this appeal to the extent that the Tribunal has exonerated the respondent-insurer from the liability to pay the compensation.

2. Brief facts giving rise to the present appeal are as under :-

a] Vehicular accident had taken place on 19.1.1992 within the limits of village Guha on Ahmednagar-Manmad Road. On 17.1.1992 day, deceased Ramdas alongwith other business man was returning to his village Kamathi from Sandawn. He was carrying with him luggage of boxes of eggs and other goods. He loaded said luggage in a truck bearing registration No. DIG-7297 at Sandawn. On 19.1.1992, the truck was running by Manmad-Ahmednagar Road when reached within the limits of village Guha, the truck dashed against a railing of bridge and fell down below the bridge. At the time of accident, driver of the truck was driving it in a rash and negligent manner and therefore, the accident had taken place. In consequence of which, deceased Ramdas and his colleague were seriously injured. Deceased Ramdas was thereafter shifted Civil Hospital, at Ahmednagar, however, on 20.1.1992 he succumbed to the injuries in the hospital. The legal representatives of deceased Ramdas preferred claim petition bearing No.581 of 1992 before the Motor Accident Claims Tribunal, Ahmednagar.

b] Though, respondents no.1 and 2 i.e. the owner and driver of the vehicle involved in the accident has not contested the claim, respondent no.3-the Insurer resisted the claim petition by filing written statement. Respondent No.3-the Insurer has taken a specific defence that, deceased alongwith one more person was travelling in the vehicle as a fare paying passenger and thus, there is breach of conditions of the insurance policy. Learned Chairman of the Tribunal, by its impugned Judgment and Award dated 19.6.2001 partly allowed the claim petition and thereby directed respondent no.2-owner to pay the compensation of Rs.2.00 lacs (inclusive of 'NFL' amount) with interest to the claimant. Claim petition as against respondent no.3-Insurer was dismissed. Hence, this appeal to the extent of dismissal of claim petition as against respondent no.3 Insurer.

3. Learned counsel for the appellant submits that, deceased Ramdas was travelling in the goods vehicle alongwith his goods. The learned counsel submits that, the Tribunal has not considered the same, but considered the defence raised by respondent no.3-Insurer that deceased Ramdas was travelling in a goods vehicle as a fare paying passenger on the basis of certain admissions given by the claimant. Learned counsel submits that, claimant no.1 has deposed before the tribunal that her husband deceased Ramdas was bringing two wheat bags, basket of hens and trays of eggs in the said truck. Learned counsel submits that, she has no where admitted in her cross examination

that her husband deceased Ramdas was travelling in a goods vehicle by paying fare. Learned counsel submits that, even in the spot panchnama, which is duly exhibited before the Tribunal, it is specifically mentioned that after the accident some wheat bags and tray of eggs found in scattered condition. Learned counsel submits that, there is no basis to draw a conclusion that deceased was travelling in a goods vehicle as fare paying passenger. Learned counsel submits that, the Tribunal has thus erroneously exonerated the respondent-insurer from the liability to pay the compensation.

4. Learned counsel for respondent no.1-Insurer submits that, even assuming that the respondent Insurer had failed to prove that deceased Ramdas was travelling in a goods truck as a fare paying passenger, the risk of the owner of the goods, travelling in the goods vehicle was not covered prior to the amendment to Section 147 of the Motor Vehicles Act. Learned counsel submits that, said amendment to Section 147 (1) (i) was carried out with effect from 14.11.1994. The

learned counsel submits that, the Supreme Court in a case of New India Assurance Co. Ltd., Vs. Asha Rani and others, Reported in **AIR 2003 Supreme Court 607 (1)** held that, the view taken in a case of New India Assurance Company Limited Vs. Satpal Singh and others reported in **AIR 2000 Supreme Court 235 (1)**, is not a good law. Learned counsel further submits that, in a case of Smt. Mallawwa Vs. Oriental Insurance Co. Ltd., reported in **AIR 1999 Supreme Court 589,** considered the provisions of Section 95 (1) proviso (ii) as it was prior to the amendment, the Supreme Court held that, if there is a death of the owner of the goods carrying in goods vehicle, the insurer is not liable to pay the compensation.

5. It appears from the impugned judgment and Award that the Tribunal has not appreciated the oral as well as documentary evidence in its proper perspective. The claimant no.1 has deposed that her husband was travelling in a goods vehicle with his goods and even the contents of the panchnama supports the case of the claimants to that extent. It also appears that the

claimant has not admitted in her cross examination that her husband deceased Ramdas was travelling in a goods vehicle as a fare paying passenger. However, even though, respondent-insurer has failed to prove its defence, the legal position would remain as it is.

6. As per the pleadings of the claimant, deceased Ramdas was travelling in a goods vehicle alongwith his goods. Said accident had taken place prior to 14.11.1994. The claimant has also deposed before the Court in terms of her pleadings that her husband deceased Ramdas was travelling in goods vehicle alongwith his goods. Prior to 14.11.1994 in view of the provisions of Section 147 of the Motor Vehicles Act, the death of the owner of the goods travelling in a goods vehicle was not covered and the Insurer was not liable to pay the compensation. The amendment with effect from 14.11.1994 in clause (i) of Section 1 of Section 147 death of the owner is thereafter covered if he is travelling alongwith his goods in goods carrying vehicle.

7. In case New India Assurance Vs. Sat Pal Singh

(supra) in paragraph No.11 of the Judgment Supreme Court has observed as under :-

> "11. The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence, the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the insurance company in respect of any accident which occurred or would occur after the new Act came into force."

8. In a case New India Assurance Company Vs. Asha Rani (supra), relied upon by the learned counsel for the insurer, the Supreme Court has overruled the decision rendered in Satpal Sing's case (supra) by the observations made in paragraph No.29 of the Judgment. Paragraph No.29 of the Judgment, reads thus :-

> "29. We may consider the matter for another angle. Section 149 (2) of the 1988 Act enables the insurers to raise defences against the claim of the claimants. In terms of Clause © of sub-section (2) of Section 149 of the Act, one of the defences which is available to the insurer is that the vehicle in question has been used

> for a purpose not allowed by the permit under which the vehicle was used. Such a statutory defence available to the insurer would be obliterated in view of the decision of this Court in Satpal Singh's case (supra).

9. In view of the above legal position, though the learned Chairman of the Tribunal has not correctly appreciated the evidence on record about the status of deceased Ramdas while travelling in a goods vehicle, the respondent-insurer cannot be held liable to pay the compensation. In view of this, no interference is called for. Hence, following order is passed.

ORDER

I. First Appeal is hereby dismissed.

II. In the circumstances, there shall be no order as to costs.

sd/-
(V.K. JADHAV, J.)

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aaa/-