IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1089 OF 2005

United India Insurance Co. Ltd.
Through its Divisional Manager
and authorized representative
and signatory, Ahmednagar,
Divisional Office, Kisan Kranti
Building, Ahmednagar, **.... APPELLANT/**
Dist. : Ahmednagar. **[ORI. OPP. NO. 3]**

V E R S U S

1. Sushabai Changdeo Sanap
Age : 34 Yrs., Occ. Household,
R/o : Tigaon, Tal. Sangamner,
Dist.: Ahmednagar.

2. Chhayabai Changdeo Sanap
Age : 12 ½ Yrs., u/g of R.No.1.

3. Vinod Changdeo Sanap
Age : 11 Yrs., u/g of R.No.1.

4. Maruti Rakhamaji Sanap
Age : Major, Occ.
R/o : Tigaon, Tal. Sangamner,
Dist.: Ahmednagar.

5. Kalabai Maruti Sanap
Age : Major, Occ.
R/o : Tigaon, Tal. Sangamner, ... **RESP.NOS. 1 TO 5/**
Dist.: Ahmednaga. **[ORI. CLAIMANT. NOS. 1 TO 5]**

6. Managing Director
Shrirampur Doodh Zilla
Madhyavarti Sahakari
Doodh Vyuavasayik Sang
Ltd., At Post Babhaleshwar,
Tal. Shrirampur, Dist.
Ahmednagar.

7. Balasaheb Nana Shinde
Age : 39 Yrs., Occ. Driver,
R/o : C/o Shrirampur Doodh
Sangh Ltd., Babaleshwar,
Tal. Shrirampur, Dist. **.... RESP.NOS. 6 & 7/**
Ahmednagar. **[ORI. OPP. NOS. 1 & 2]**

....

Mr. A.B.Gatne, Advocate for Appellant.
Mr. S.S.Jadhavar, Advocate for R.Nos. 1 to 3.
Mr. V.H.Dighe, Advocate for R.No. 6.
Mr. N.R.Bhavar, Advocate for R.No. 7.

....

CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2016

....

JUDGMENT :

1. The Appeal is filed to challenge the Judgment and Award of M.A.C.P. No. 96/2002 [old No. 709/1995] which was pending before the Motor Accident Claims Tribunal, Sangamner, Dist. Ahmednagar.

2. Insurance Company has challenged the decision, as it is made to pay the compensation to indemnify the owner of the offending vehicle. Heard learned counsels for both sides.

3. Limited point is raised by the insurance company viz. the liability of insurance company in respect of fare paying or gratuitous passenger from goods vehicle.

4. The claim was filed by the widow and minor issues of deceased Changdeo Sanap. It is the case of the claimants that on the day of the accident, Changdeo boarded the offending vehicle, a milk tanker bearing No. MWA 5720 as he wanted to proceed to Nasik to attend a marriage. It is contended that he boarded the tanker with his goods like gift articles for the marriage, Basta and the said tanker met with

an accident. Changdeo died in the accident.

5. The claim was contested by insurance company by filing Written Statement. It is the case of the insurance company that the deceased was present in the cabin of the tanker as a passenger and risk of the deceased was not covered under the policy. The accident took place on 05/05/1995. It is contended that there was also breach of conditions of policy as the passenger was carried in goods vehicle.

6. Original respondent No. 2, the driver, filed Written Statement. He contended that the deceased was present in the vehicle with marriage ceremony articles, as the owner of goods. The owner of the offending vehicle filed Written Statement and opposed the proceeding.

7. The evidence of the claimants is as per the aforesaid contentions. Copy of spot panchanama is not disputed and it shows that two persons sitting in driver's cabin were victims of the accident, but there were no goods in the cabin. In the F.I.R. given by the Police Officer [Exh.61]

also, the deceased was mentioned as a passenger in the vehicle. In the cross examination, the claimant, widow of the deceased has admitted that her husband was travelling in milk tanker as fare paying passenger. Respondent No. 1 – owner has examined his employee viz. Pawar and he has given evidence that undertaking was obtained from the tanker driver, employee of the Co-operative Milk Society that he will not carry passengers in the tanker. Copy of that undertaking is produced at Exh. 18.

8. Policy of insurance is produced at Exh. 84 and it shows that the offending vehicle was insured as milk tanker. The terms and conditions of the policy show that the risk of the employees of the owner was covered. Risk of the owner of goods or person who had taken the vehicle on hire basis for transporting goods was also covered.

9. In view of the aforesaid circumstances, learned counsel for insurance company submitted that risk of the deceased, who was a passenger, was not at all covered and the insurance company can not be made to pay anything as compensation. He took this Court through the provisions of

Section 147 of the Motor Vehicles Act, 1988, the definition given in Section 2 (13) and 2 (14), provision of Section 66 and provision of Rule 108 of Maharashtra Motor Vehicles Rules. He placed reliance on the case reported in ***2005 (1) IAC 277 (A.P.) - Deddula Padmavathi & Ors. Vs. Maddala Srinivasa Rao & Anr***.

10. There is specific evidence given by the owner that the milk tanker was to be used for carrying milk of the co-operative society. The body of the tanker/truck was constructed accordingly. It is clear that the permit was obtained for such purpose and that is why the owner could not have given the truck on hire basis for carrying goods of others. Specific defence is taken by the owner that owner had not authorized the driver to take passengers in the vehicle. The deceased was not an employee of the owner of the offending vehicle and so it was necessary for the claimants to show that the deceased was travelling in goods carrier as owner of goods and he could have been allowed to travel in the said vehicle in that capacity.

11. The evidence as it is shown that there was some

hand baggage with the deceased and they were not the goods, for the transportation of which the vehicle could have been taken on hire basis. On the contrary, the claimant has admitted that the deceased had paid fare for travelling in the vehicle, as fare paying passenger. The luggage of the deceased was not found when the spot panchanama was prepared. Even if some luggage like bag of the deceased was there, on the basis of such luggage inference could not have been drawn that the deceased was a person in the vehicle as owner of goods in view of the definitions mentioned in aforesaid Sections.

12. The policy document and provisions of Section 147 of the Motor Vehicles Act show that there was no coverage of insurance in respect of the deceased, passenger in goods carrier. The Tribunal has committed error for fastening the liability on insurance company to pay the compensation. As there was no coverage, this Court holds that the decision given against the insurance company needs to be set aside.

13. In the result, following order is made.

ORDER

[i] The Appeal is allowed.

[ii] The Judgment and Award passed by the Motor Accident Claims Tribunal, Sangamner, Dist. Ahmednagar as against original respondent No. 3 – Appellant - Insurance Company is hereby set aside.

[iii] The Claim Petition as against the Insurance Company stands dismissed. However, respondent Nos. 1 and 2, owner and the driver, are still jointly and severally liable to pay the entire amount of compensation and Award is to be prepared accordingly.

[iv] Amount, if any, deposited by the Insurance Company is to be returned to it with interest which must have accrued.

[T.V.NALAWADE, J.]