FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

FIRST APPEAL NO. 1835 OF 2015
WITH CA/8439/2015 IN FA/1835/2015

HDFC ERGO GENERAL INSURANCE CO. LTD. THR ITS BRANCH MANAGER, DHULE

VERSUS

RANGRAO NAVAL PATIL AND OTHERS

AND

FIRST APPEAL NO.: 1836 OF 2015
WITH CA/8440/2015 IN FA/1836/2015
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HDFC ERGO GENERAL INSURANCE CO. LTD. THR ITS BRANCH MANAGER, DHULE

VERSUS

ASHABAI DAGADU BADGUJAR AND OTHERS
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Advocate for Appellant : Mr. Chapalgaonkar S. G.
Advocate for Respondent Nos.3 and 4: Mr. V. Y. Patil.
***

CORAM: T. V. NALAWADE, J.
DATED: 24th FEBRUARY, 2016.

PER COURT:

1. The first proceeding is filed against judgment and

Award of Claim Petition No.19 of 2012 and the second proceeding is filed against Judgment and Award of Claim Petition No. 1122 of 2011. Both the claim petitions were pending before Claims Tribunal, Dhule. The Tribunal has fastened the liability to pay compensation on the insurance company and so the insurance company has filed the appeals. Both the sides are heard.

2. The challenge of the insurance company is on the limited point viz. the liability in respect of deceased who were in transport vehicle. It is the case of insurance company that both the deceased persons were present in the transport vehicle as passengers and so risk of such persons was not covered under the policy. Meager amount of compensation is given by the Tribunal by presuming notional income as Rs.3,000/- in both the cases when the accident took place in the year 2011 and so the challenge is not on the point of quantum.

3. It is the case of claimants from both the proceedings that the deceased were present in Eicher truck No.MH-18-AA-7289 along with their goods, vegetables and they were taking their goods to Surat, Gujarat State for selling the vegetables. Chetan Patil Suryawanshi was a son of the

claimant Nos.1 and 2 in Claim Petition No.19 of 2012 and Dagadu Badgujar was the husband of Claimant No.1 and father of other claimants from claim petition No.1122 of 2011.

4. The claimants have no personal knowledge regarding the accident. They have relied on police papers and also the evidence of the owner of the vehicle involved in the accident. The vehicle had turned turtle in Maharashtra and within local jurisdiction of Nawapur Police Station, Tahsil Nawapur, District Nandurbar. The FIR was given by one Ravindra Mali, who was also present in the vehicle. He had informed that along with him some farmers of Kusumba and one person of village Fagane were present in the vehicle. There was information that the persons were taking vegetables.

5. Learned counsel for insurance company submitted that in FIR Ravindra, who is examined as witness in Claim Petition No.19 of 2012, had not informed that the person from Fagane has loaded his vegetables and so it cannot be presumed that deceased Badgujar was present in the vehicle with his goods as owner of goods. There is substantive evidence of Ravindra to the effect that both

these deceased persons had boarded the vehicle with their goods and they were traveling as owner of goods. Nothing could be brought on record during cross examination of this witness who is independent witness and who is from village Kapadne, District Dhule to create probability that these two persons had not loaded their goods in the vehicle.

6. Owner of the vehicle, Kishor Badgujar has given evidence that both the deceased were traveling in his vehicle as owners of the goods, vegetables. Copy of spot Panchanama is on the record which is not disputed and it shows that the vegetables were found in the vehicle and they were found on the road as the vehicle turned turtle. In view of this record, this Court holds that the claimants have proved on preponderance of probability that both the deceased were present in the transport vehicle as owner of goods. On this point, learned counsel for the claimants had placed reliance on the case reported as ***2015 (6) All MR 289 (Mrs. Vimal M. Pujari & Ors. V/s Shri Ganesh M. Konar & Ors.)***, Panaji Bench of this Court. In this case, this Court laid down that the claimants are required to prove their case before Tribunal on preponderance of

probability. There cannot be any dispute over this proposition.

7. The learned for the Appellant drew the attention of this Court to Rule 108 of Maharashtra Motor Vehicle Rules, 1989. The relevant portion is Rule 108 (1) which runs as under:

> "***108. Carriage of persons in goods vehicles.***–*(1) Subject to the provisions of this rule, no person shall be carried in a goods vehicle:*
>
> *Provided that the owner or the hirer or a bona fide employee of the owner or the hirer of the vehicle carried free of charge or any officer of the Motor Vehicles Department may be carried in a goods vehicle, the total number of persons so carried,–*
>
> *(i) in light transport goods vehicle having registered laden weight less 990 kgs. be not more than one;*
>
> *(ii) in any other light transport goods vehicle, not more than three, and*
>
> *(iii) in any goods vehicle other than light transport vehicle, not more than seven :*
>
> *Provided further that, the provisions of sub-clauses (ii) and (iii) of the above proviso shall not be applicable to the vehicles plying on inter-State route or the vehicles carrying*

material in liquid form in tanker."

8. The learned counsel submitted that the claimants have given evidence that the vehicle was proceeding to Gujarat State and so in view of the aforesaid Rule, it was not permissible to take the deceased on the vehicle even as owners of goods. This submission is not acceptable. Firstly, the accident took place in Maharashtra and no record is produced to show that for the transport vehicle such inter state permit was obtained. On the contrary, Exhibit-24 shows that the permit was only for Maharashtra. Further, the provision of Section 147 of Motor Vehicle Act needs to be kept in mind as the provision of section will prevail over the provision made in the Rules if the provision in the Rule is not consistent with the provision made in section. Section 147 (1) of Motor Vehicle Act runs as under:

> ***"147. Requirements of policies and limits of liability.*** *(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-*
>
> *(a) is issued by a person who is an authorised insurer; and*
>
> *(b) insures the person or classes of person*

specified in the policy to the extent; specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;

(ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place :"

9. The provision of section 147 of Motor Vehicle Act shows that in the year 1994 by making amendment the Legislature covered the owner of goods and it is the statutory liability to give coverage to the risk in respect of owner of goods. It can be said that if the vehicle is being used as transport vehicle, goods vehicle inside of Maharashtra, the aforesaid Rules made by Maharashtra Government may control the number of persons. If the vehicle is taken to other State, then the Rules of that State will be applicable in that regard. In any case, under the

law there is no restriction that only one person can take his goods in a transport vehicle and such restriction is not there against the owner of the vehicle also. In view of these circumstances, this Court holds that there is no force in the second defence taken by the insurance company. The defence was taken by the insurance company in the written statement that the vehicle was overloaded and there was breach of permit and so there was also breach of terms and conditions of policy. Another defence was taken that the deceased were gratuitous passengers and so their risk was not covered. In written statement it is mentioned that the seating capacity of the vehicle was 2+1, including driver, as per R.C.Book and so there was no coverage in respect of risk to the deceased. The aforesaid provision of section 147 of the Motor Vehicle Act is sufficient to answer to the aforesaid defences taken by the insurance company. No evidence is given to prove that vehicle was overloaded.

10. The learned counsel for the insurance company placed reliance on some reported cases like (i) ***2007 AIR SCW 7337 (National Insurance Co. Ltd. V/s Cholleti***

Bharatamma and others), (ii) ***AIR 2007 SC 1334 (1) (New India Assurance Co. Ltd. V/s Vedwati and others)*** and (iii) ***2010 (1) TAC 401 (Bom) (Lahu Lakma Bije V/s Kirtikumar Dayalji Kothari & Anr.).*** In the first case, there was no evidence to prove that the deceased was traveling in the lorry along with his goods, as owner of goods and so the protection of provision of section 147 of Motor Vehicle Act was not given. In the second case, it is laid down by the Apex Court that if passengers are traveling in goods vehicle, the liability in respect of such passengers is not covered and so insurance company cannot be held liable to pay the compensation. In the last case, it is observed by this Court that if some persons boarded transport vehicle with personal belongings like luggage then they cannot be called as owners of goods. There cannot be any dispute over these propositions. So, this Court holds that it is not possible to interfere in the decision given by the Tribunal.

11. In the result, both the appeals stand dismissed.

12. The amount of compensation is to be sent to the Tribunal for disbursement of the same.

13. In view of final disposal of the first appeals, the pending civil applications therein, for stay, do not survive and the same also stand disposed of accordingly.

(T. V. NALAWADE, J.)

Dt.24/02/2016.
ans/1835