IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2075/2015

United India Insurance Company Ltd
Through its Divisional Office,
Divisional Manager, Osmanpura,
Aurangabad. = **APPELLANT**
(orig.Resp.no.3)

VERSUS

1) Smt. Mangalabai w/o Punju Shimpi
Age: 30 Yrs., occu. Household,
R/o Karwand, Dist.Shirpur,
District Dhule.

2) Kum.Pooja D/o Punju Shimpi,
Age: 10 Yrs., occu. Education,
R/o Karwand, Dist.Shirpur,
District Dhule.

3) Vicky s/o Punju Shimpi,
Age: 7 Yrs., occu. Education,
R/o Karwand, Dist.Shirpur,
District Dhule.

(Resp.Nos. 2 & 3 are minor
U/g of Resp.No.1, i.e.mother)

4) Dwarkabai w/o Bansilal Shimpi
Age:60 Yrs., occu. Household,
R/o Karwand, Dist.Shirpur,
District Dhule.

5) Eknath s/o Kashiram Patil
Age: 45 Yrs., occu. Driver,
R/o Karwand, Dist.Shirpur,
District Dhule.

6) Shantabai w/o Tarachand Koli
Age: Major, occ. Household,
R/o Karwand, Dist.Shirpur,
District Dhule. = **RESPONDENTS**
(Resp.Nos. 1 to 4 orig.
claimants, Resp.No.5

6 orig.Resp.)

Mr.SV Kulkarni, for Appellant;

Mr.Unmesh B.Shriram, Adv. h/for Mr. DS Bagul, Adv. For Respondent Nos.1 and 4;

Mr.Lalitkumar S.Mahajan, Adv. For Resp.Nos. 5 & 6 in CA No.9875/2015

CORAM : P.R.BORA, J.

DATE OF RESERVING JUDGMENT : 2nd April,2016
DATE OF PRONOUNCING JUDGMENT: 3rd May, 2016

JUDGMENT

1) Heard finally with the consent of learned counsel appearing for the parties at admission stage.

2) The Judgment and Award passed on 15th April, 2015 in MACP No.650/2010 by the Member, Motor Accident Claims Tribunal, Dhule, (for short, the Tribunal)is challenged in the present appeal by the insurance company, who was Respondent No.3 in the said claim petition.

. The Judgment and Award is challenged mainly on the ground that the risk of deceased Punju was not covered under the insurance policy pertaining to the tractor and trolley involved in the alleged accident and as such, no Award could have been passed against the appellant insurance company. Quantum of compensation is not disputed.

3) It was the contention of the claimants before the Tribunal that deceased Punju was employed as labour on the offending tractor. On the date of the accident, cow-dung was being transported in the trolley of the said tractor. As averred in the claim petition, the driver of the tractor was driving the same in a rash and negligent manner. It was the further contention of the claimants that deceased Punju, who was working as labour on the offending tractor, suffered death in the said accident as a result of rash and negligent driving of the driver of the said tractor. Age of the deceased was stated to be 27 years on the date of the accident and his monthly income was stated to be Rs.7,000/-. Compensation of Rs.5,00,000/- was claimed by the claimants from the driver, owner and insurer of

the offending tractor and trolley.

4) The Driver and owner of the tractor though resisted the claim petition by filing their written statement, did not thereafter participate in the proceeding. There was no cross-examination by Respondent Nos. 1 and 2 of the witnesses examined on behalf of the claimants nor any evidence was adduced by these respondents.

5) Respondent No.3/insurance company had disputed its liability to pay compensation taking a plea that the risk of the deceased was not covered under the insurance policy. Certain other contentions were also raised by the insurance company, thereby denying and disputing the age and income of the deceased.

6) The widow of deceased Punju, i.e. original claimant No.1, deposed before the Tribunal, in order to substantiate the contentions raised in the claim petition. No

further oral evidence was adduced on behalf of the claimants. Respondent No.3/insurance company examined its Divisional Manager and placed on record certain documents.

7) The learned Tribunal, on the basis of oral and documentary evidence brought before it, held the claimants entitled for the total compensation of Rs.10,41,000/- and directed the driver, owner and insurer of the offending tractor and trolley to jointly or severally pay the aforesaid compensation to the claimants. Aggrieved with the said decision, the insurance company is before this Court in the present appeal.

8) Shri S.V.Kulkarni, the learned Counsel appearing for the appellant/insurance company, submitted that though the risk of deceased Punju was not covered under the policy, the Tribunal has erroneously fastened the liability upon the appellant/insurance company to pay the

compensation to the claimants jointly or severally with driver and owner of the offending tractor. The learned counsel, inviting my attention to document at Exhibit-43 in the record of the Tribunal, submitted that the concerned insurance policy bears a specific note thereon that neither a coolie nor a workman is covered under the policy. The learned Counsel submitted that in such circumstances, the insurance company was liable to be exonerated from its liability to indemnify the insured.

9) The learned Counsel appearing for Respondent Nos.1 to 4, supported the impugned Judgment and Award. The learned Counsel appearing for Respondent Nos. 5 and 6 also supported the impugned Judgment and Award and prayed for dismissal of the appeal.

10) After having heard the arguments advanced by the learned Counsel appearing for the respective parties and on perusal of the record,

it appears that the controversy relates to the issue "whether or not the risk of the deceased was covered under the insurance policy of the offending tractor and trolley or not?"

11) On careful perusal of the record of the trial court, it is revealed that neither the claimants nor any of the respondents, including the appellant/insurance company, has placed on record the complete insurance policy purchased for the offending tractor and trolley. Whether the insurer would be liable or not would entirely depend upon the nature of the policy of insurance and the terms and conditions incorporated therein. It is thus evident that the insurance policy must have been before the Court, without which, it was not possible to reach to any conclusion whether the risk of the deceased was covered under the insurance policy or not. In fact, the insurance company ought to have filed on record the complete document of insurance policy. What is filed on record by the insurance

company at Exhibit-43 is the Certificate of Insurance and the document in respect of compliance of Section 64-VB of the Insurance Act, 1938.

12) Document at Exhibit-43 filed by the insurance company, described as a copy of insurance policy, is in fact, not a insurance policy and cannot be depended upon. Exhibit-43 consists of four pages. First page of it depicts that it is page 2 of 2. However, its first page is not there on record. Second page of Exhibit-43 shows that it is page 1 of 1. So there may not be any dispute as regards to the said page. In 3rd page nothing is mentioned as to whether this was a single page document or otherwise. Fourth page of Exhibit-43 shows that it is page 1 of 2; however, its 2nd page is not filed on record. Secondly, in the Certificate of Insurance, which apparently appears in respect of the tractor, premium amount is shown as Rs.9,557/-; whereas on the last page, i.e. page 4 thereof, premium

amount is shown as Rs. 8,615/-. Nothing can be gathered from this document at Exhibit-43, whether there were separate policies for tractor and trolley; and if yes, how much was the premium paid for each of them and what were the terms and conditions of the insurance policies so purchased. Further, as has been observed by the learned Tribunal, the endorsement made in hand-writing on page 4 of Exhibit-43, also raise certain doubts. It needs to be verified from the original policy whether it also bears the same endorsement. In the fact of the present case, it is thus evident that unless the insuranceolicy is filed on record, it may not be possible to draw any conclusion whether the insurer would be liable or not to indemnify the insured.

13) In this view of the matter, I do not see any other option except to remand the matter to the learned Tribunal with liberty to the appellant/insurance company to file on record the insurance policy in respect of the offending

tractor and trolley, so that from the nature of the insurance policy and the terms and conditions set out therein, the Tribunal can take a decision whether the insurer would be liable or not to indemnify the insured. Hence, the following order, -

ORDER

i) The impugned Judgment and Award passed by the tribunal is set aside;

ii) The matter is remanded to the Motor Accident Claims Tribunal, Dhule to enable the appellant/insurance company to produce on record the insurance policy in respect of the offending tractor and trolley with liberty to the parties to file additional documents and also to lead further evidence as may be required, restricted to the issue whether the risk of the deceased was covered under the insurance policy;

iii) The Tribunal shall expeditiously complete the hearing and decide the aforesaid issue and depending upon the said decision modify the Award , if required, within a period of six months after receiving the record from this Court;

iv) Parties to the present appeal are directed to appear before the Tribunal at Dhule on **7th June, 2016;**

v) Registry to send back the Record and Proceeding to the Tribunal at Dhule forthwith;

vi) The amount deposited by the Insurance Company in the present appeal be transmitted to Motor Accident Claims Tribunal, Dhule;

vii) The First Appeal stands partly allowed in the aforesaid terms. Pending Civil application, if any, stands disposed of.

sd/-
(P.R.BORA)
JUDGE

bdv/
fldr 20.4.16