IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No.2631 of 2013

1) Bharat S/o Piraji Jadhav,
Age 55 years,
Occupation : Driver,
R/o Shastri Nagar, Parbhani,
Taluka Parbhani.

2) Sayyed Sujaoddin S/o Nizamoddin
Khatib,
Age 70 years,
Occupation : Owner of Tanker,
R/o Datta Nagar, Nilanga,
Taluka Nilanga. .. **Appellants.**

Versus

1) Rajkumar S/o Baliram Suryawanshi,
Age 45 years,
Occupation : Labour,
R/o Milind Nagar, Nilanga,
District Latur.

2) Komal w/o Rajkumar Suryawanshi,
Age 35 years,
Occupation & R/o As above.

3) Anamika D/o Rajkumar Suryawanshi,
Age 6 years, occupation: Nil,
under guardianship of real
mother, claimant No.2.

4) United India Insurance Co. Ltd.
Opposite Gorakshan,
Tilak Nagar, Main Road, Latur. .. **Respondents.**

Shri. Ravibhushan P. Adgaonkar, Advocate, for appellants.

Shri. S.B. Gastgar, Advocate, for respondent Nos.1 to 3.

Shri. S.S. Rathi, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 3rd MARCH 2016

JUDGMENT:

1) The appeal is filed by owner of the vehicle against the judgment and award of Claim Petition No.29 of 2009 which was pending before the Claim Tribunal Nilanga. As the insurance company is exonerated, it is not asked to indemnify the owner, the owner has challenged the decision. Heard both sides.

2) The accident took place on 4-6-2008. Deceased Priyanka was aged about 14 years and she was daughter of claimant Nos.1 and 2. It is contended that at the relevant time the deceased was present in the truck-tanker baring No.MH-11/A-5498 as the employee and she was proceeding to the place of work. The tanker was being used for carrying tar. The tanker turned turtle and

Priyanka died in the accident. In claim petition filed under section 166 of the Motor Vehicles Act compensation of Rs.2.5 lakh was claimed against the driver, owner and insurance company of aforesaid vehicle. The Tribunal has awarded compensation of Rs.1,84,500/- on the principle of fault but the insurance company is exonerated by holding that age of the deceased was only 14 years and she could not have been employed as a labour on such work.

3) To substantiate the claim, mother has given evidence which is as per the aforesaid contentions. The deceased was sitting in the cabin of the truck-tanker. In the cross examination evidence is given by the mother that deceased was getting Rs.70/- per day and she was expected to spread the tar on the road after going to the place where the work was going on. At one place she admitted in the cross-examination that she was the passenger but the evidence as a whole needs to be read and the evidence as a whole shows that she was present in the vehicle as a labour of the owner. In police papers there is mention that labours were proceeding in the tanker for doing the work of construction of road.

4) Copy of insurance policy is on the record and it shows that at the relevant time the vehicle was insured with respondent No.3. Premium in respect of 6 persons was paid for giving coverage under the WC Act. Learned counsel for the insurance company submits that in view of Rule 108 of the Maharashtra Motor Vehicles Rules no person except driver and cleaner could have been allowed to travel in the truck-tanker and so it needs to be presumed that risk of the deceased was covered. In view of the contents of the policy this Court holds that this submission made for the insurance company is not acceptable. When the insurance given had the cover to the employees of the owner, now it cannot deny the liability by showing some rules made by the State Government under the Motor Vehicles Act. Other submission was made by the learned counsel for the insurance company that the age of the deceased was around 14 years and she could not have been employed for such work. This contention is also not acceptable. The age is shown as about 14 years in the post mortem report. The parents are illiterate. It is social and beneficial legislation and so it needs to be presumed that the

deceased had completed 14 years of age. Further owner of the vehicle has filed written statement and he has admitted that he had employed the deceased as a labour. Even if the deceased was below 14 years of age, this Court holds that such defence could not have been considered. If she was really below age of 14 years as per the defence of the insurance company, in such cases person employing child labour can be penalised but the victims cannot be denied the compensation on that ground.

5) In view of the aforesaid circumstances this Court holds that the risk to the deceased was covered under the policy and the deceased was present in the vehicle as employee of the owner. The Tribunal has committed error in exonerating the insurance company. In the result, following order is made :-

6) The appeal is allowed. The judgment and award of the Tribunal exonerating the insurance company and dismissing the claim against the insurance company is hereby set aside. The claim filed against the insurance

company is allowed. Respondent Nos.1 to 3 to jointly and severally pay the compensation awarded by the Tribunal. Disbursement is to be made as per the award of the Tribunal. Award to be modified accordingly.

7) Learned counsel for the insurance company wants to challenge the decision and for that he wants time. Time of 5 weeks is granted.

Sd/-
(T.V. NALAWADE, J.)

rsl