IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2667 OF 2013

The Divisional Manager
Oriental Insurance Co. Ltd.
Aurangabad, Dist. **.... APPELLANT/**
Aurangabad. **[ORI. OPP. NO. 2]**

V E R S U S

1. Smt. Muktabai Mohan Raut
Age : 45 Yrs., Occ. Household,
R/o : Chasnil, Tq. Kopargaon,
Dist.: Ahmednagar.

2. Kum. Meena Mohan Raut
Age : 25 Yrs., Occ. Education,
R/o : Chasnil, Tq. Kopargaon,
Dist.: Ahmednagar.

3. Master Sachin Mohan Raut
Age : 23 Yrs., Occ. Education,
R/o : Chasnil, Tq. Kopargaon,
Dist.: Ahmednagar.

4. Master Kiran Mohan Raut
Age : 21 Yrs., Occ. Education,
R/o : Chasnil, Tq. Kopargaon,
Dist.: Ahmednagar.

5. Yashodabai Kachru Raut
Age : 65 Yrs., Occ. Nil,
R/o : Chasnil, Tq. Kopargaon,
Dist.: Ahmednagar.

6. Kachru Kishan Raut
Age : 70 Yrs., Occ. Nil,
R/o : Chasnil, Tq. Kopargaon, ... **RESP.NOS. 1 TO 6/**
Dist.: Ahmednagar. **[ORI. PETITIONERS]**

7. Machindra Ratanrao Gaike
Age : Major, Occ. Tempo
owner, R/o : Dhamori, Tq. .... **RESP.NO. 7/**
Kopargaon, Dist.: Ahmednagar. **[ORI. RESP.NO.1]**

8. Rohidas Gangadhar Bhangare
Age : Major, Occ. Truck
owner, R/o : Manoharpur, Tq. .... **RESP.NO. 8/**
Akola, Dist.: Ahmednagar. **[ORI. RESP.NO.3]**

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Mr. M.K.Goyanka, Advocate for Appellant.
Mr. A.T.Kanwade, Advocate for R.Nos. 1 to 5.
Mr. P.N.Sonpethkar, Advocate for R. No. 7.
Mr. V.Y.Bhide, Advocate for R.No. 8.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 17th FEBRUARY, 2016

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JUDGMENT :

1. The Appeal is '**admitted**'. Notice after admission made returnable forthwith. Heard by consent for final disposal.

2. Insurance company of offending vehicle has filed Appeal to challenge the Judgment and Award of M.A.C.P. No. 91/2003, which was pending before the Motor Accident Claims Tribunal, Kopargaon, district Ahmednagar. The proceeding was filed u/s 163-A of the Motor Vehicles Act, 1988 and as insurance company is held liable to indemnify the owner of the offending vehicle, the decision is challenged by the insurance company.

3. The claim was filed in respect of the death of Mohan Kachru Raut, who was running hair cutting saloon and who was making income also by cultivating his family land. The claim was filed by widow, minor issues and the parents of the deceased. They have contended that they were totally dependent for their livelihood on the income of the deceased.

4. The accident took place on 13/05/2003 within the local jurisdiction of Akole police station. The deceased was travelling in Tempo bearing No. MH-20-F-6011. There was collision between said Tempo and Truck bearing No. MH-17-A-6006. It is the case of the claimants that they are entitled to get compensation from the owners of both the vehicles involved in the accident and the amount of ₹ 6,49,500/- was claimed.

5. The insurance company of tempo, respondent No. 2, contested the matter. It is admitted that the driver of Tempo was prosecuted by police for the accident but it contended that the accident took place due to fault of truck driver. The defence was taken by Insurance Company that Tempo was goods carrier and it was insured as goods carrier and so passengers could not have travelled in the Tempo. It was contended that there has been breach of condition of policy and the insurance company can not be held liable to indemnify the owner of tempo.

6. The owner of tempo, respondent No. 1, filed Written Statement. In Written Statement, he contended that

he had given the tempo out of friendly relationship to one Balasaheb Belekar, who wanted to bring the gift articles from the place of marriage. The owner contended that nothing was charged by him and in this tempo, at the relevant time, the friends of bridegroom and other persons from the side of Belekar were travelling to attend the marriage. The owner contended that the accident took place due to the fault of truck driver.

7. Respondent No. 3, the owner of truck, filed Written Statement and contested the matter. He contended that the accident had taken place due to the fault of tempo driver.

8. The Appeal is filed by insurance company of tempo and so the other issues need not be considered. The evidence of widow of the deceased shows that the deceased was running hair cutting saloon shop and he was making income from agriculture also. It is not her case that he was working as coolie on the tempo. In Examination-in-Chief, she did not state anything about the capacity in which the deceased was travelling in tempo. In the cross examination,

she admitted that at the relevant time her husband was proceeding in the tempo to attend the marriage of one Belekar. She has given evidence that the owner used to give tempo to his friends and relatives for such purpose. She has admitted that in the present matter the tempo was allowed to be used by the owner and only diesel was to be filled by Belekar.

9. In the cross examination taken by the owner, a suggestion is given to this witness that her husband was to do the work of loading and unloading marriage articles at the place of marriage. No such defence was taken by the owner in the Written Statement. In view of the absence of evidence from Belekar on this point, not much can be made out from the admission of the widow of the deceased.

10. In the cross examination made by the learned counsel for insurance company, she again admitted that 10 – 15 persons were travelling in the tempo and they were proceeding to attend the marriage. She has specifically admitted that her husband was also proceeding to attend the same marriage. The police papers show that no articles,

whatsoever were present in the tempo, on the basis of which it can be said that some persons were carrying the goods in the transport vehicle.

11. Insurance company has examined one officer of R.T.O. office to prove that the vehicle was registered as goods carrier.

12. The aforesaid material shows that in goods carrier, marriage party including the deceased were travelling as passengers. U/s 147 of the Motor Vehicles Act, such persons are not required to be covered under policy of insurance statutorily. In view of the nature of permit, passengers can not be allowed to travel in such vehicle. Thus, the risk of the deceased was not covered under the policy. In view of this circumstance, the Tribunal could not have fastened the liability on insurance company of tempo and insurance company could not have been asked to indemnify the owner. Thus, error is committed by the Tribunal in fastening the liability on insurance company. To that extent, the decision needs to be set aside.

13. Learned counsel for respondents/claimants and owner placed reliance on some reported cases, which are as follows :

[i] 2015 DGLS (Soft.) 393 - [Khenyei Vs. New India Assurance Co.Ltd. & Ors.].

[ii] 2002 ACJ 407 - [Latabai Bhagwan Kakade & Ors. Vs. Mohammed Ismail Mohd. Saab Bagwan & Ors.].

[iii] 2007 ACJ 2614 - [United India Insurance Co. Ltd. Vs. Rekha & Ors.].

[iv] 2009 ACJ 1733 - [New India Assurance Co.Ltd. Vs. P.Saguna & Ors.].

[v] 2009 ACJ 1751 - [Hemavathi Vs. New India Assurance Co. Ltd.& Ors.].

[vi] 2012 (3) ALL MR 181 - [National Insurance Co. Ltd. Vs. Smt. Ashwini Balu Gaude & Ors.].

[vii] 2014 ACJ 681 - [Hanumanagouda Vs. United India Insurance Co. Ltd. & Ors.].

[viii] 2008 (1) Mh.L.J. 73 - [United India Insurance Co. Ltd. Vs. Anubai Gopichand Thakare & Ors.].

The facts and circumstances of these cases are different.

14. In view of the facts and circumstances of the case, this Court holds that Appeal deserves to be allowed.

15. In the result, following order is made.

[i] First Appeal No. 2667 of 2013 is allowed.

[ii] The Judgment and Award of the Tribunal is hereby set aside. The claim filed as against insurance company of Tempo i.e. respondent No. 2 stands dismissed.

[iii] Other part of the Judgment and Award remains and the amount can be recovered from the owner of the Tempo.

[iv] Civil Application 1910 of 2016 stands disposed of.

[T.V.NALAWADE, J.]