IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 958 OF 2016

Dwarka Wd/o Bhiva Shendage,
Age- 51 years, Occu- Household & Agriculture,
R/o Sawargaon, Tal- Ashti, Dist. Beed ...PETITIONER

versus

01. State of Maharashtra
Through the Commissioner Agriculture,
Commissionerate of Agriculture
M.S. Central Building, 3rd Floor,
Pune -411 001

02. The Member Secretary,
District Controlling Committee, Beed
i.e. the District Superintendent Agriculture
Officer, Beed.

03. The Deccan Insurance & Reinsurance
Brokers Pvt. Ltd. Through its
Regional Manager, 201 Mount Wart Zenit,
office No. 201, Opp. L.G. Showroom, Near
Baner Telephone Exchange, Baner Road,
Baner, Pune- 411 045.

(Respondent No. 3 is deleted as per
order dated 26-02-2016.)

04. Branch Manager,
Future General India Insurance
Company Limited. Opposite District
Court, Pagariya Tower, Jalna Road,
Aurangabad ...RESPONDENTS

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Mr. Ashok S. Pavse, Advocate for petitioner
Mr. B.A. Shinde, AGP for respondents No. 1 and 2
Respondent No. 3 is deleted as per order dated 26-02-2016
Mr. S.S. Patil, Advocate for respondent No. 4

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CORAM : S. V. GANGAPURWALA AND K.K. SONAWANE, JJ.

DATED : 12th APRIL, 2016.

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.

2. Mr. Pavase, learned counsel for petitioner strenuously contends that Ganesh Bhiva Shenadge died in the road accident. He was agriculturist and is covered by the scheme known as "*Farmer Individual Accident Insurance Scheme*" (for short "Scheme"). According to learned counsel, the petitioner is mother of deceased Ganesh Bhiva Shenadge, who had filed claim seeking compensation of Rs.1,00,000/- (Rupees one lakh) in accordance with said scheme. The respondent - Insurance Company repudiated said claim on the grounds that the deceased was carrying more passengers than the capacity of the vehicle involved in accident, so also the name of the deceased Ganesh Bhiva Shenadge did not appear in the 7/12 extract at the time of his death.

3. Learned counsel further submits that only because the deceased was carrying more passengers/persons than the capacity in the vehicle would not exonerate the Insurance Company from its liability. The deceased Ganesh Bhiva Shenadge had filed Regular Civil Suit No. 965 of 2012 for partition and separate possession and the same was decreed on 09-12-2012. It is, only thereafter, the process of recording the name of deceased in the relevant record could be commenced.

4. Learned counsel further submits that the accident had taken place on 14-05-2013 and deceased Ganesh Bhiva Shenadge died on very same day. Thus, the petitioner is entitled for benefit of said scheme.

5. Mr. Patil, learned counsel appearing for respondent No. 4 – Insurance Company submits that there was breach of policy in asmuch the deceased Ganesh was driving the vehicle by carrying excess passengers than the capacity of the vehicle and the deceased was not agriculturist. Clause No. (VI-1) of the agreement dated 12th August, 2011 pursuant to Government Resolution dated 4th December, 2009 was rightly invoked.

6. We have considered the submissions canvassed by learned counsel for respective parties. The scheme is beneficial and social welfare scheme meant to redress the family of the person who has died in accident.

7. Perusal of Government Resolution dated 4th December, 2009, it is manifest that ground for rejection of claim for compensation on account of death of person who was driving the vehicle is only that he was not possessing valid license. In the present case, Insurance company has not come with a case that the deceased was not possessing effective driving license. Clause in the Government Resolution, more particularly, clause 13 (e)(7) specifically lays down that no claim shall be repudiated only on the ground that excess risk was undertaken. It is not the case of the respondent Insurance

company that accident took place because deceased was carrying excess passengers in the vehicle.

8. The deceased had already filed Regular Civil Suit No. 965 of 2012 for partition and separate possession in respect of agriculture lands and the same was also decreed. No further evidence is required to show that the deceased was agriculturist and would be entitled for the coverage of the Scheme/Policy. In the light of the facts of the matter and scheme in its entirety which is social welfare scheme, ground of repudiation cannot be sustained.

9. In the light of the above, impugned communication dated 20-07-2013 issued by respondent No. 4 – Insurance company repudiating the claim of the petitioner is quashed and set aside. Respondent No. 4 – Insurance Company shall make payment of Rs.1,00,000/- (Rupees One Lakh) to the petitioner along with interest @ of 9% p. a. from the date of lodging claim till its realization.

10. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly.

Sd/- Sd/-

[K. K. SONAWANE, J.] **[S. V. GANGAPURWALA, J.]**

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