

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.160 OF 2001

M/s United India Insurance Co. Ltd.,
having it's Registered and Head Office at
34, whites Road, Chennai-600 014.
Branch Office at Hanuman Chowk,
Latur and Divisional Office at V.P.Chowk,
Station Road, Osmanpura, Aurangabad
Through it's Senior Divisional Manager and
Constituted Attorney Mr. Bhimsing Julalsing
Somwanshi. ...Appellant...
(Orig opponent No.2.)

V E R S U S

1. Hanmant s/o Shamrao Waghate
appeal against respondent no.1 dismissed.
2. Gopal s/o Dhamraj Patil,
age 25 yrs, Occ. Business,
R/o as above. ..Respondents...

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Shri V N Upadhye advocate for appellant.
Appeal dismissed as against respondent no.1.
None present for respondent No.2.

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CORAM : V.K. JADHAV, J.

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Reserved on : July 06, 2017
Pronounced on : August 21, 2017.

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JUDGMENT :-

1. Being aggrieved by the Judgment and Award
passed by the Commissioner for Workmen's

Compensation and Judge, Labour Court, dated 30.11.1999 in W.C.No.25/1997, the original respondent no.2 insurer has preferred this appeal.

2. Brief facts, giving rise to the preset appeal are as under :-

a] The applicant Hanmant was in employment of respondent No.1 as a driver since 15.7.1996 till the date of accident. Respondent No.1 is the owner of the truck bearing registration No.MH-24/A-2535. As per the case of the applicant, on 21.10.1996, respondent No.1 owner has directed him to purchase the diesel from the petrol pump at Murud and also bricks from village Deolali. Respondent No.1 owner also directed the labourers to accompany the applicant in the aforesaid truck for loading and unloading the bricks. Accordingly, the applicant alongwith labourers proceeded towards Murud in the said truck and after filling diesel from the said Petrol Pump at Murud started proceeding towards village Deolali by Latur Barshi Road. On way, near the field of one Chandar Nade, due to sudden mechanical

fault, said truck turned turtled and collapsed in a road side ditch towards northern side of the road. In consequence of which, the applicant as well as labourers travelling in the said truck sustained grievous injuries. The applicant has sustained fractured injuries on his right leg, thigh, elbow and on other parts of the body. He was immediately shifted to Civil Hospital, Latur where he had taken the treatment for one and half months as indoor patient. Even after discharge, he was advised to take bed rest for three weeks. The applicant has therefore approached the commissioner for Workmen;s Compensation, Latur for grant of compensation by filing W.C.No.25/1997. It has been contended in the application that, the applicant is unable to move from one place to another without aid. He has become totally disabled. He has spent an amount of Rs.20,000/- towards medical expenses. He has suffered total disablement out of and in the course of employment with respondent no.1 owner. It has also been contended that, respondent no.1 owner was paying him Rs.2,500/- per month as salary. Due to aforesaid

disablement, he is not able to drive the vehicle and as such, he cannot earn anything. It has also been contended that, said vehicle is insured with the appellant-insurer and as such, respondents are liable to pay the compensation.

b] The respondent No.1 owner has resisted the claim by filing written statement. It has been contended that, it is not within the knowledge of the respondent owner that the applicant has sustained fractured injuries on right leg, thigh, right elbow etc. It has been denied that the applicant become totally disabled. It has also been denied that the applicant has incurred medical expenses. Respondent owner however, admitted that he was paying Rs.2,500/- monthly salary to the applicant. It has been specifically contended that, said truck is insured with appellant-insurer and risk of the driver is covered under the said insurance policy.

c] The appellant-insurer has also strongly resisted the claim by filing written statement. The appellant-

insurer has denied the employer-employee relationship, salary and medical expenses incurred by the applicant. It has also been denied that, the applicant was carrying labours in the said truck for loading and unloading the bricks. The appellant-insurer has also denied the salary of Rs.2,500/- being paid to the applicant. It has been specifically contended that as per the documents and police report submitted on record by the applicant himself, there were 40-50 persons travelling in the said goods truck as a passengers for the purpose of celebration of Dussera Festival. The FIR has been lodged by one of the co-passengers namely Keshav Thombare and accordingly, Crime No.81/1996 came to be registered. The concerned Investigating Officer has investigated the matter and recorded the statements of the persons including the owner of the vehicle. As per those statements, said vehicle has been engaged for the purpose of carrying passengers to Tuljapur for Darshan of Goddess Tuljabhavani on the occasion of 'Dassara' festival. It has been contended that, there has been clear breach of the specified terms and conditions of the

policy and as such the appellant- insurer is not liable to pay the compensation and it is for the owner to pay the compensation, if any, to the applicant.

d] The applicant has adduced oral and documentary evidence in support his contention. Respondent-owner and the appellant-insurer have not adduced any evidence. The learned Commissioner for Workmen's Compensation by its impugned judgment and order dated 30.11.1999 held that, respondent No.1 employer and appellant insurer are jointly and severally liable to pay the amount of compensation of Rs. 1,20,996/- and interest thereon at the rate of Rs. 12% per annum from the date of accident i.e. 21.10.1996 till its realization. Being aggrieved by the same, respondent-insurer has preferred this appeal.

3. The learned counsel for the appellant-insurer submits that, despite admitted fact that passengers were travelling in a goods vehicle, the Commissioner for Workmen's Compensation has saddled the liability on

the appellant-insurer. The learned counsel submits that, the applicant himself has filed on record certified copy of the F.I.R, which is marked at Exh. U-17, one Keshav Pandurang Thombre has lodged the complaint in the concerned Police Station. He was travelling as a passenger in the said goods truck involved in the accident. He has reported to the Police that on 21.10.1996 at about 12.00 noon some 40 to 45 persons started travelling in the said goods Truck for a destination of Tuljapur for celebration of Dassara festival and Darshan of Goddess Tulja Bhavani and on way the accident had taken place. He has also reported to the Police that, in consequence of the said accident, two persons in the cabin died on the spot whereas 25 to 30 passengers sustained severe injuries. Learned counsel submits that, the learned Commissioner for Workmen's Compensation has not considered first information report and erroneously saddled the liability on the appellant-insurer to pay the compensation jointly and severally along with the respondent owner. Learned counsel submits that, there has been clearcut breach of

the conditions of the Policy. In a claim under the provisions of Workmen's Compensation Act 1923, defences available to the insurer would be unlimited and all pleas are available to it. Learned counsel submits that, though risk of the driver is covered under the policy, on account of breach of the specified conditions of the policy, the appellant/insurer is not liable to pay the compensation. The appellant/insurer subject to the terms and conditions of the contract of the insurer is bound to indemnify the insured under the provisions of Workmen's Compensation Act, 1923 (Hereinafter referred to as the Act of 1923). Learned counsel submits that, provisions of Section 143 of the M.V.Act,1988 makes the provisions of Act of 1923 applicable only in case arising out of no fault liability as contained in Chapter X of the M.V.Act 1988. The provisions of Section 143, therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI of the M.V.Act. The restrictions on the defences available to insurance company in terms of section 149 of the M.V.Act have no application to the

proceeding under the Workmen's compensation Act.

4. Learned counsel for the appellant-insurer in order to substantiate his submissions placed reliance on the following cases :-

- I) National Insurance Company Ltd. Vs. Mastan reported in 2006 AIR SC 577.
- II) M/s National Insurer Co. Ltd Vs. Maruti and others (in FA No.604/2010) (decided by this Court Coram R M Borde, J.)

5. The appeal is dismissed against respondent No.1 original claimant for want of steps. None present for respondent No.2 owner.

6. The applicant has specifically pleaded in his application that, on the day of incident, he was carrying labourers in the Goods Truck as directed by the respondent-owner for loading and unloading bricks. As per his pleadings, he was proceeding towards village Deolali as directed to him by the respondent owner to bring bricks, however, the applicant has deposed before the Commissioner that, at Murud he filled the Diesel in

the Truck and then proceeded towards Tuljapur. He has admitted in his cross-examination that, 40 to 45 persons were travelling in his goods truck at the time of accident for the purpose of Darashan to Tulajapur. He has also admitted in his cross-examination that there were no goods in the Truck at that time. He has also stated in his cross-examination that, he refused to carry the passengers in the Goods Truck, but, as instructed by respondent owner he carried the passengers in the goods Truck. The applicant-himself has placed on record certified copy of the F.I.R and panchnama, and same are marked at Exh. U-17 and 18 respectively. On perusal of the certified copy of the F.I.R U-17, it appears that, one of the passenger Keshav Thombare has reported the incident to the Police, wherein, he has specifically narrated that near about 40 to 45 passengers were travelling in the said goods truck for the purpose of Darashan of Goddess Tuljabhavani at Tulajapur on the occasion of Dussera festival. Thus, the facts which has been admitted by the applicant ought to have been accepted by the Commissioner for Workmen's

Compensation and finding ought to have been recorded that there has been breach of specified terms and conditions of the insurance policy.

7. In the case National Insurance Co. Ltd Vs. Mastan (supra) relied upon by the learned counsel for the appellant insurer in paragraph No.18, 19 and 20 of the Judgment the Supreme Court has made following observations :-

- “18. It is beyond any doubt or dispute that in a proceeding where the right of the insurer to raise a defence is limited in terms of sub-section (2) of [Section 149](#), an appeal preferred by it against an award of the Motor Accidents Claims Tribunal must only be confined or limited to some extent. But once a leave has been granted to the insurer to contest the claim on any ground as envisaged in [Section 170](#) of the 1988 Act, an appeal shall also be maintainable as a matter of right, wherein the High Court can go into all contentions. The Full Bench of the Karnataka High Court, in our opinion, committed a serious error in relying upon the judgments of this Court, in terms whereof the right of appeal of the insurance company has been held to be limited, inasmuch in those decisions this Court was considering a situation where sub-section (2) of [Section 149](#) was attracted.
19. [Section 143](#) of the 1988 Act limits its applicability to the 1923 Act in a case where the liability arises despite the fact that the accident might have taken place without any fault on the part of the driver of the vehicle or others in control thereof. Under the 1923 Act also, as noticed herein before, a workman is entitled to compensation even if no negligence is proved against the owner or any other person in charge of the vehicle. It is, thus, not possible to extend the applicability of [Section 143](#) of the 1988 Act to include Chapter XI thereof to a claim under the 1923 Act.
20. Right of appeal is a creature of statute. The scope and ambit of an appeal in terms of Section 30 of the 1923 Act and Section 173 of the 1988 Act are distinct and different.

They arise under different situations. In a case falling under the 1923 Act, negligence on the part of the owner may not be required to be proved. Therein what is required to be proved is that the workman suffered injuries or died in course of employment. The amount of compensation would be determined having regard to the nature of injuries suffered by the worker and other factors as specified in the Act. The findings of fact arrived at by the Commissioner for Workmens Compensation are final and binding. Subject to the limitations contained in Section 30 of the 1923 Act, an appeal would be maintainable before the High Court; but to put the insurer to further disadvantages would lead to an incongruous situation.

8. The M.V. Act 1988 provides for mandatory insurance for matters laid down under section 147 of the Act and thus award can be passed against an insurer. An insurer having regard to the provisions of the Section 149(2) of the Act, 1988 have limited defences as provided therein, however, the defence of an insurer in a proceeding under the Act of 1923 would be unlimited and all the defences are available to the insurer.

9. The insurance company can agitate violation of any condition of policy to make it substantial question of law.

10. In the case, National Insurance Co. Vs. Mastan

(supra) in paragraph No. 21 and 22 of the Judgment the Supreme Court has made following observations.

21. An insurer, subject to the terms and conditions of contract of insurance, is bound to indemnify the insured under the 1923 Act as also the 1988 Act. But as noticed herein before, keeping in view the nature and purport of the two statutes, the defences which can be raised by the insurer being different, the scope and ambit of appeal are also different.
22. Under the 1988 Act, the driver of the vehicle is liable but he would not be liable in a case arising under the 1923 Act. If the driver of the vehicle has no licence, the insurer would not be liable to indemnify the insured. In a given situation, the Accident Claims Tribunal, having regard to its rights and liabilities vis-a-vis. the third person may direct the insurance company to meet the liabilities of the insurer, permitting it to recover the same from the insured. The 1923 Act does not envisage such a situation. Role of Reference by incorporation has limited application. A limited right to defend a claim petition arising under one statute cannot be held to be applicable in a claim petition arising under a different statute unless there exists express provision therefor. [Section 143](#) of the 1988 Act makes the provisions of the 1923 Act applicable only in a case arising out of no fault liability, as contained in Chapter X of the 1988 Act. The provisions of [Section 143](#), therefore, cannot be said to have any application in relation to a claim petition filed under Chapter XI thereof. A fortiori in a claim arising under Chapter XI, the provisions of the 1923 Act will have no application. A party to a lis, having regard to the different provisions of the two Acts cannot enforce liabilities of the insurer under both the Acts. He has to elect for one.

11. In view of the admitted facts in this case, there has been specified breach of the conditions of the policy. The appellant-insurer has discharged its burden to prove its defence on the basis of admitted fact. The learned commissioner for Workmen's compensation has erred in fixing the liability in respect of the payment of

compensation on the appellant insurer. The appeal is thus deserves to be allowed to that extent. Hence the following order.

ORDER

1. Appeal is hereby partly allowed.
2. The Judgment and award passed by the Commissioner for Workmen's Compensation and Judge, Labour Court, Latur dated 30.11.1999 in W.C. No. 25 of 1997 is hereby quashed and set aside to the extent that, appellant/ original opponent No.2 jointly and severally liable to pay the amount of compensation and directing the appellant insurer to deposit the amount of compensation along with interest.
3. Rest of the judgment and award passed as against respondent / original opponent No.1 owner stands confirmed.
4. If, any amount is deposited before the Commissioner for Workmen's Compensation and Judge, Labour Court, Latur, the same shall be refunded to the appellant insurer along

with accrued interest if any.

5. Award be drawn up accordingly.
6. Appeal is accordingly disposed of.
7. Pending civil application if any, also stand disposed of.

(V.K. JADHAV, J.)

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