

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 684 OF 1997

M/s. New India Assurance Co., Ltd.
Kings Road, Ahmednagar
Having its regd. & head office
New India Assurance Building,
87, M.G. Road, Fort, Bombay 400 001.
and Divisional Office at Adalat Road,
Aurangabad 431 005 through its
Sr/Divisional Manager & Constituted
Attorney Mr. Sayed Khalil Sayed Chand ... **Appellant**

Versus

1. Narsubai Ambadas Yamui,
Age: 50 yrs, Occ. Household work
2. Narsing s/o Ambadas Yamui,
Age: 17 years, Occ. Nil.
Minor through guardian no.1
Both R/o Mominpura, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.
3. Rajendra Dhondu Davakhare,
Age: 35 years, Occ. Driver,
R/o Rangar Galli, Sangamner,
Dist. Ahmednagar.
4. Faroj Khan Ahmed Khan Pathan,
Age: 50 years, Occ. Truck Owner,
R/o Naikwadpura, Sangamner,
Dist. Ahmednagar. ... **Respondents**

Mr. V.N. Upadhye, Advocate for Appellant.
Mr. D.A. Naik, Advocate for respondent nos. 1 and 2.
Mr. V.P. Latange, Advocate for respondent no.4.

CORAM : V.K. JADHAV, J.
DATE : 17-03-2017.

ORAL JUDGMENT :

1. Being aggrieved by the judgment and award passed by the M.A.C.T. Ahmednagar dated 31.07.1997 in M.A.C.P. No. 508 of 1990, the original respondent no.3-insurer has preferred this appeal.

2. Brief facts giving rise to the present appeal are as follows.

3. On 15.07.1986 at about 5.00 a.m. deceased was coming from Bhiwandi to Sangamner by boarding one truck bearing registration no. MWA-1325 being driven by respondent no.1. When the said truck came near the Sangamer Sugar Factory, respondent no.1 lost his control and the truck went in the road side ditch and turned turtle. In consequence of which deceased Ambadas sustained severe crush injuries on his legs and chest. He succumbed to the injuries while under treatment in the hospital. The legal representative/claimants of deceased Ambadas approached to the Tribunal by filing M.A.C.P. No. 508 of 1990 for grant of compensation under the various heads. It has been contended in the claim petition that the accident had taken place on account of the rash and negligent driving of the driver of the truck and the deceased was in service on a monthly salary of Rs. 1,000/- and the claimants were entirely depending on his income.

The respondent no.1 driver has denied all the allegations made in the claim petition and it has been contended

that he has not driven the vehicle in rash and negligent manner at the time of accident.

The respondent no.2-owner has admitted the accident in question, however, denied that respondent no.1 had driven the vehicle in rash and negligent manner at the time of accident. It has been contended that the claimants have claimed exorbitant amount of compensation. It has been contended that the accident had taken on account of the rainfall and slippery road.

The appellant-insurer has also strongly resisted the claim petition. It has been contended that, the deceased was traveling in a goods truck from Bhiwandi to Sangamner as a fare paying passenger and he was not traveling in pursuance of the contract of employment. The policy does not cover the risk of the passenger for consideration given for hire or reward. There has been breach of the terms of the condition of the policy and, therefore, the insurer is not liable to pay the compensation.

The claimants adduced oral and documentary evidence in support of their contention. The learned Member of the Tribunal by its judgment and award partly allowed the petition and thereby directed the respondent nos. 1 and 2 and present appellant to jointly and severally to pay the petitioner of sum of Rs. 83,044/- together with interest @ 12% per annum from the date of filing of the petition till its realisation along with the proportionate costs.

Hence the appeal.

4. The learned counsel for the appellant-insurer submits that, in the instant case, the accident had taken before the amendment of Section 147(1) of the Motor Vehicles Act, 1988 in 1994, thus, the insurance company is not liable for the death or injuries sustained by the owner of the goods or his authorised agents traveling in the truck. The learned counsel submits that, it is the specific case of the claimants that deceased Ambadas was traveling in the goods vehicle truck along with his goods and thus the claimants are entitled for the compensation. The learned counsel submits that, the risk of such a passenger is not covered under the policy, however, the Tribunal has erroneously fastened the liability on the appellant-insurer.

5. The learned counsel for the appellant-insurer, in order to substantiate his submission placed reliance in the case of **New India Assurance Co. Ltd. Vs. Asha Rani and Ors.** reported in **AIR 2003 SC 607** and in the case of **The New India Assurance Company Ltd. Vs. Lilabai Shrimant Misal** reported in **(2015) 1 Mh.L.J. 827.**

6. The learned counsel for the respondent-original claimants submits that, there is no pleading by the claimants that deceased Ambadas was traveling in the goods vehicle truck along with his goods and on the basis of the admission given by the driver

in his cross-examination, only the Tribunal has drawn such a inference. The learned counsel submits that, accident had taken place in the year 1986 and the Tribunal has awarded a very meagre amount of compensation, out of the said amount the appellant-insurer has deposited near about Rs. 35,000/- before this Court and the claimants have also withdrawn 50% amount from the said amount. The learned counsel submits that, it is difficult for the claimants to recover the amount from the owner and, thus, the appellant-insurer may be directed to deposit the entire amount under the award and recover the same from the respondent.

7. The learned counsel for the respondent-owner submits that, the Tribunal has rightly fastened the liability on the appellant-insurer to pay the compensation amount jointly and severally along with the respondent-owner. No interference required.

8. On careful perusal of the pleadings, evidence and the impugned judgment and award, it appears that, the claimants have not pleaded that in what capacity the deceased was traveling in a goods vehicle truck. The respondent no.1-driver has examined himself at exhibit-72 and in cross-examination he has stated that when they left Bhiwandi, seven persons including himself were traveling in the said truck and 600 tons of palm oil was loaded in the truck and each tin was containing 60 liters of palm oil and one Sanjay Sakhi was the cleaner. He has further explained that, out of

the said persons four persons were in the body of the truck and three persons were in the cabin. It is thus clear that, on the basis of these admissions, it can be inferred that deceased Ambadas was neither traveling in the truck as a owner of the goods nor as an employee of the respondent-owner. Thus, the only irresistible inference could be drawn that deceased Ambadas was traveling in the goods vehicle as a passenger.

9. In a case of **New India Assurance Co. Ltd. Vs. Asha Rani and Ors. (supra)** relied upon by the learned counsel for the appellant, the Supreme Court has observed that where the accident took place before the amendment of Section 147(1) of the Motor Vehicles Act, 1988 in 1994, the insurance company will not be liable for death or injuries sustained by the owner of the goods or his authorised agent traveling in the goods vehicle. The Supreme Court held that, insurer will not be liable to pay the compensation to the owner of the goods or his authorised representative on being carried in a goods vehicle, when the vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.

10. In view of the above discussion, it appears that, the learned Member of the Tribunal has erroneously fastened the liability on the appellant-insurer. In view of the provisions of Section 147 (1) of the Motor Vehicles Act, 1988 prior to amendment

in the year 1994, the appellant-insurer cannot be directed to pay the compensation and recover the same from the respondent particularly on the background that deceased Ambadas was traveling in the vehicle involved in the accident and, as such, he was not a third party to the accident. I accordingly proceed to pass the following order.

ORDER

- i) Appeal is hereby partly allowed, no costs.
- ii) The judgment and award dated 31.07.1997 passed by the M.A.C.T. Ahmednagar in M.A.C.P. No. 508 of 1990 is quashed and set aside to the extent of directing the present appellant-insurer to pay jointly and severally the amount of compensation along with the original respondent nos. 1 and 2.
- iii) Rest of the judgment and award to the extent of negligence and the quantum stands confirmed and the respondent nos. 1 and 2 jointly and severally liable to pay the same.
- iv) Appeal is accordingly disposed of.
- v) The appellant insurer has deposited the amount before this Court. Balance amount shall be refunded.

(V.K. JADHAV)
JUDGE