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

13 **FIRST APPEAL NO. 2947 OF 2008**

National Insurance Co. Ltd.,
having it's Head Office and Registered
Office at 3, Meddeleton Street, Kolkata,
one of its Branch office at Latur and
one of its Divisional Office at Hazari
Chambers, Station Road, Aurangabad,
now through its Divisional Manager,
Aurangabad ..**APPELLANT**
(Orig. Respondent No.2)

VERSUS

1. Baliram S/o Ambadas Jadhav
Age : Major, Occu : Transport,
Business and owner of Truck
No.MH-25/7981, R/o Umre galli,
Osmanabad, Dist. Osmanabad ..**RESPONDENT**
(Orig. Respondent No.1)

2. Janabai w/o Ramrao Chavan
Age : 25 years, Occu : Household
R/o Jyotiba Tanda (Andga), Tal. Loha,
Dist. Nanded

3. Balaji S/o. Ramrao Chavan
Age : 8 years, Minor U/g of real
mother Janabai w/o Ramrao Chavan

4. Zulabai w/o Tukaram Chavan
Age : 50 years, Occu : household,
R/o. Jyotiba Tanda (Andga), Tal. Loha,
Dist. Nanded

5. Bandu s/o Ramrao Chavan
Age : 6 years, Minor U/g of real
mother petitioner No.1 Janabai Chavan
R/o. Jyotiba Tanda (Andga) Tal. Loha,

Dist. Nanded .. **RESPONDENTS**
(Orig. claimants Nos.1 to 4)

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Advocate for Appellant : Mr. R.E. Bora h/f
Mr. P.P. Bafna
Advocate for Respondent no.1 : Mr. V D Salunke &
Mr. R V Naiknaware
Advocate for Respondents No.2, 3 & 5 : Mr. K.M. Nagarkar

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CORAM : P.R. BORA, J.
Dated: July 10, 2017

ORAL JUDGMENT :-

1. The Insurance Company has filed the present appeal against the Judgment and order passed by Motor Accident Claims Tribunal at Nanded in Motor Accident Claim Petition No.304/97 decided on 24.03.2003.

2. The aforesaid claim petition was decided by the Tribunal along with other two claim petitions bearing Motor Accident Claim Petition Nos.305/97 and 306/97.

3. The aforesaid claim petition was filed by present respondent nos.1 to 4 claiming compensation on account of the death of one Ramrao Tukaram Chavan who died in a vehicular accident happened on 16.03.1997 having involvement of a truck bearing registration no.MJH-25/7981 (hereinafter referred to as the 'offending truck') owned by the present respondent no.1 and insured with the appellant/Insurance company. It was the contention of the claimants before the Tribunal, that deceased Ramrao died because of the rash and negligent driving of the driver,

who was driving the offending truck at the relevant time. The claimants had therefore claimed the compensation amounting to Rs.4,50,000/- from the owner and insurer of the offending truck.

4. The claim petition was resisted by the Insurance Company by filing it's Written Statement on various grounds.

5. The owner of the truck though appeared before the tribunal did not file his written statement and the petition was proceeded without his written statement.

6. The tribunal on the basis of the oral and documentary evidence brought before it held the claimants entitled to the total compensation of Rs.1,80,000/- and direct the owner and insurer of the offending truck to pay the said amount of compensation to the claimants. Being aggrieved and dissatisfied by the Judgment and order passed by Motor Accident Claims Tribunal at Nanded on 24.03.2003, the Insurance Company has filed the present appeal.

7. Shri. Bora the learned Counsel appearing for advocate Shri. Bafna the learned Counsel for the insurance company submitted that, the tribunal has manifestly erred in holding the owner and insurer of the offending truck liable for payment of the compensation to the claimants though there was a specific plea raised by the insurance company that, the insurance policy of the insured vehicle was not covering the risk of passengers being carried in the said truck. The learned Counsel submitted that, since deceased was a passenger in the goods truck the insurance company was not liable even statutorily to cover his risk in its policy. The learned Counsel submitted that, the documents on record were

sufficient to draw an inference that, the passengers were being carried through the goods truck and as such no liability could have been fixed on the insurance company. The learned Counsel submitted that, the documents on record were enough to prove that, the owner of the insured truck has committed the breach of the policy by carrying the passengers in the goods truck. The learned Counsel further submitted that, the tribunal has also erred in awarding the compensation at higher side without considering that, there was no income proof as about the income of deceased. The learned Counsel submitted that, in such circumstances the impugned award needs to be quashed and set aside.

8. Shri. Nagarkar the learned Counsel appearing for the original claimants and Shri. Khaire learned Counsel appearing for the owner of the truck supported the impugned Judgment and Award. Shri. Nagarkar submitted that, since beginning it was the specific case pleaded by the claimants that deceased Ramrao was employed on the said truck as a labour for loading and unloading of sugarcane. The learned Counsel submitted that as such the insurance policy was certainly covering the risk of deceased. The learned Counsel submitted that, the insurance company though had taken the defence of breach of policy conditions, the defence so raised was not substantiated by it. The learned Counsel, therefore, prayed for dismissal of the appeal.

9. I have carefully considered the submissions advanced by the learned counsel appearing for the respective parties. I have also perused the impugned Judgment, the evidence on record and other material placed on record. The only point which needs consideration in the present matter is whether the objection raised

by the Insurance Company can be upheld that the risk of deceased was not covered by the insurance policy pertaining to the insured vehicle. Admittedly, the Insurance Company neither examined any witness on its behalf nor placed on record any document to show that, the breach of policy conditions was committed by the owner of the offending truck.

10. As was rightly submitted by Shri. Nagarkar, the claimants had since beginning come out with case that deceased Ramrao was labour on the offending truck for loading and unloading sugarcane. During the course of the argument it was sought to be canvassed by Shri. Bora, learned Counsel appearing of Insurance Company that in the offending truck at the relevant time around 15 passengers were travelling though Insurance policy of the said truck was covering the risk of only 6 employees other than the driver. In view of the fact that, the claimants have sufficiently proved that, deceased was a labour on the goods truck and no contrary evidence has been brought on record by the Insurance company, I see no reason to record any contrary finding as has been recorded by the tribunal. The tribunal has rightly held that, deceased Ramrao was a labour on the said truck and his risk was covered by the insurance policy.

11. When it was the defence raised by the insurance company alleging breach of the terms and conditions of the insurance policy by the owner of the truck, the insurance company was expected to lead positive evidence in that regard to substantiate the said contention, and must have sufficiently proved the breach on part of the owner of the vehicle. As I noted earlier, the insurance company did not examine any witness or did not file on record any

document. It is thus evident that though the defence was raised by the insurance company, the same was not substantiated by it. Merely because the FIR reveals that, there were 15 passengers in the goods truck, the case put forth by the claimant that deceased Ramrao was employee on the said truck cannot be brushed aside in absence of contrary evidence. I therefore do not find any substance in the objection raised by the appellant / Insurance Company that though it had proved that the owner of the truck had committed the breach of policy conditions, the tribunal has passed an award also against the Insurance Company.

12. In so far as the objection about the quantum is concerned, I do not find it necessary to make any discussion, since the tribunal has awarded a very reasonable amount of compensation to the claimants. Admittedly deceased was aged about 30 years . By applying the criteria of notional income the tribunal has determined the amount of compensation. I therefore see no reason to cause any interference in the amount of compensation so reasonably determined.

13. The appeal being devoid of any merit deserves to be dismissed and is accordingly dismissed, however without any order as to the costs.

(P.R. BORA, J.)

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