IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.36 OF 2004

New India Assurance Company Ltd.,
Through it's Divisional Manager,
Adalat Road, Aurangabad

...APPELLANT
(Orig. Resp. No.3)

VERSUS

1. Gangubai w/o Raosaheb Solat,
Age: 46 years, Occu. Household,
R/o. Gangapur, Tq. Gangapur,
Dist. Aurangabad
(Orig. Claimant)

2. TATA Engineering & Locomotive
Company Limited, Through it's
Regional Sales Office, TELCO,
Ambala-Chandigarh Road,
Dist. Ropur (Punjab) **...RESPONDENTS**
(Orig. Resp. No.1)

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Mr. S.G. Chapalgaonkar, Adv. for Appellant;
Mr. V.D. Patnurkar, Adv. for Resp. No.1
Mr. A.S. Bajaj, Adv. for Resp. No.2.

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CORAM : P.R.BORA, J.

DATE : July 28th, 2017.

ORAL JUDGMENT:

1. The Insurance Company has filed the present appeal against the judgment and award dated 21st of February, 2003, passed by the Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No.245/1998.

2. Respondent no.1 had filed the aforesaid petition claiming compensation on account of death of her husband, namely, Raosaheb Solat, alleging the same to have been caused in a vehicular accident happened on 24th of May, 1998, having involvement of a Tata Chassis bearing registration No.MH-12-685 and a Taxi bearing registration No.MH-020-A-1507.

3. It was the contention of respondent no.1 that deceased Raosaheb was carrying goods through the said Tata Chassis and in the capacity of the owner of the said goods was travelling by the said Chassis. Initially, the petition was filed under Section 166 of the Act. Subsequently, it was amended and the claim petition was converted into a petition under Section 163-A of the Act.

4. The claim petition was contested by the appellant Insurance Company by filing its written statement. It was the specific defense raised by the appellant Insurance Company that the vehicle in question

was a Chassis and was not at all meant for transportation of goods, or any passenger. It was also contended that the permit to the said vehicle was issued only for the purpose of carrying the Chassis from the manufacturer to the dealer. It was also the defense raised by the Insurance Company that the vehicle was possessing a Trade Certificate. It was also specifically pleaded that risk of the deceased was not covered under the insurance policy meant for the offending vehicle.

5. The Tribunal, however, turned down the objections so raised by the Insurance Company and allowed the petition against the Insurance Company also, holding it jointly and severally liable with the owner of the said Chassis, and directed it to pay compensation of Rs.1,35,000/- to the claimants with interest thereon at the rate of 9 per cent per annum from the date of the petition till its realization. Aggrieved thereby, the Insurance Company has preferred the present appeal.

6. Shri Chapalgaonkar, learned Counsel appearing

for the appellant Insurance Company, submitted that the Tribunal has manifestly erred in not appreciating the defenses raised by the Insurance Company. Learned Counsel submitted that the vehicle was having a Trade Certificate, meaning thereby that it was permitted to be carried from the manufacturer to the dealer. Learned Counsel further submitted that no passenger was allowed to be carried on the said chassis. Learned Counsel submitted that admittedly, the deceased was father of the person who was driving the said chassis and the said driver had illegally allowed the deceased to travel along with him on the said Chassis. Learned Counsel further submitted that the risk of the deceased was not at all covered by the Insurance policy pertaining to the said vehicle. Learned Counsel pointed out that in so far as the Insurance for Chassis is concerned, it is a usual practice to purchase the policy in group, for more than one chassis at a time. Learned Counsel submitted that the insurance policy filed on record by the Insurance Company demonstrates the said fact. Learned Counsel submitted that, however, the Tribunal has wrongly held that it was a comprehensive policy covering the risk of passengers by drawing some unwarranted inference and has allowed the claim petition even against the appellant Insurance Company. Learned Counsel submitted that the Tribunal has further erred in recording a finding that the deceased was a person travelling along with the goods in the said chassis and, therefore, his risk was covered by the Insurance policy and has, therefore, wrongly held the Insurance Company liable to pay the amount of compensation to the heirs of the deceased.

7. In support of contentions raised by him, the learned Counsel relied upon the judgment of the Honourable Apex Court in the case of National Insurance Company Vs. Jugalkishore and others (AIR 1988 SC 719) and the judgment of the Division Bench of this Court in the case of United India Insurance Co.Ltd., Jalgaon Vs. Shaheda Parvin (2008 BCI 243).

8. Shri V.D.Patnurkar, learned Counsel appearing for respondent no.1, supported the impugned judgment

and award. Shri A.S.Bajaj, learned Counsel appearing for respondent no.2 also supported the impugned judgment and award. Learned Counsel submitted that the Tribunal has rightly discussed the facts involved in the petition and has correctly interpreted the relevant legal provisions while holding the appellant Insurance Company liable to pay the amount of compensation to the claimants. Learned Counsel submitted that no interference is warranted in the impugned judgment and award. He, therefore, prayed for dismissal of the appeal.

9. After having considered the submissions advanced by the learned Counsel appearing for the respective parties and on perusal of the impugned judgment and the material on record, the impugned judgment and award apparently appears unsustainable and deserves to be set aside for the following reasons.

10. In her testimony before the Court, the claimant, though, has deposed that deceased Raosaheb was travelling through a truck and that there were seats in

the said truck for the purpose of sitting, the material on record does not support her contention. Even in the claim petition, the offending vehicle is stated to be a Tata Chassis. In the spot panchnama also, the offending vehicle is described as a Tata Chassis. It is further significant to note that witness no.2, examined by the claimant, namely, Laxman Raosaheb Solat, who was at the relevant time driving the offending Tata Chassis, has admitted in his cross examination that except driver, no one else was allowed to sit in the cabin of the said Chassis. The learned Tribunal, however, has completely ignored the said evidence and on some wrong pre-conceived notions, has recorded a complete erroneous finding that the insurance policy of the offending vehicle was covering the risk of the passengers carried in the said vehicle. The moot question was whether it was permissible to carry any passenger by the said Chassis and as mentioned hereinabove, the answer was given by the witness examined by the claimant herself that it was not permissible. Even otherwise, the Chassis of a vehicle cannot be, in any case, held to be a goods carrier so as to carry the goods through the said vehicle and, consequently, to allow the owner of the said goods to travel by the said vehicle. As has come on record, deceased Raosaheb was the father of Laxman who was driving the said Tata Chassis at the relevant time. It is evident that the said Laxman has illegally allowed his father to travel in the said chassis.

11. The Insurance policy filed on record at Exh.45 demonstrates that the said Chassis was possessing a temporary registration. As submitted by the learned Counsel for the appellant, a trade certificate was issued for the said Chassis in favour of the owner of the said Chassis. Rule 41 of the Central Motor Vehicles Rules, 1989, prescribes the purposes for which the motor vehicle with trade certificate may be used. The said Rule reads thus:

> "**41. Purposes for which motor vehicle with trade certificate may be used**.— The holder of a trade certificate shall not use any vehicle in a public place under that certificate for any purpose other than the following:—
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> (a) for test, by or on behalf of the holder of a trade certificate during the course of, or after

completion of, construction or repair; or

(b) for proceeding to or returning from a weigh bridge for or after weighment, or to and from any place for its registration; or

(c) for a reasonable trial or demonstration by or for the benefit of a prospective purchaser and for proceeding to or returning from the place where such person intends to keep it; or

(d) for proceeding to or returning from the premises of the dealer or of the purchaser or of any other dealer for the purpose of delivery; or

(e) for proceeding to or returning from a workshop with the objective of fitting a body to the vehicle or painting or for repairs; or

f) for proceeding to and returning from airport, railway station, wharf for or after being transported; or

(g) for proceeding to or returning from an exhibition of motor vehicles or any place at which the vehicle is to be or has been offered for sale; or

(h) for removing the vehicle after it has been taken possession of by or on behalf of the financier due to any default on the part of the other party under the provisions of an agreement of hire-purchase, lease or hypothecation."

It was thus evident that the Chassis involved in the alleged accident was not liable to be used for any other purpose than prescribed in the aforesaid Rule. In the circumstances, it was not permissible to carry any passenger or any goods through the said Chassis. The policy of insurance also clearly demonstrates that the Chassis which was insured by the said policy was having seating capacity of only one person i.e. the driver of the vehicle. I reiterate that the said fact has also been admitted by the Driver of the said vehicle.

12. The impugned judgment and award reveals that the learned Tribunal, ignoring the aforesaid evidence on record that the offending Chassis was having a temporary registration, and was holding a trade certificate, and further that in the Insurance policy of the said vehicle, it was categorically mentioned that the said Chassis was having seating capacity of only one person, entered into some irrelevant discussion and has recorded some unconscionable and erroneous conclusions. The entire discussion made by the Tribunal in paragraph no.7 of the judgment is irrelevant. I am constrained to observe that the learned Tribunal utterly failed in appreciating the controversy involved in the matter and proceeded on some wrong footing. The rulings which are discussed in the

impugned judgment also are not relevant and inapplicable. On what basis the learned Tribunal has recorded a conclusion that the Insurance policy at Exh.45 is a comprehensive policy is not understood. On the contrary, the insurance policy clearly demonstrates that it was a transit policy, validity of which was only for a period of one month i.e. from 13th of May, 1998, to 12th of June, 1998.

13. Further, the learned Tribunal has wrongly held the deceased to be a third party. As has been discussed hereinabove, the Driver of the offending Chassis, who happens to be the father of the deceased, had illegally allowed the deceased to travel through the said Chassis though it was impermissible in view of the fact that the vehicle was holding a trade certificate and in the policy of insurance purchased for the said vehicle, it was categorically mentioned that the said Chassis was having seating capacity of only one person i.e. the driver of the said vehicle. It is, thus, evident that the deceased, in no case can be held to be a `Third-Party', but was an illegal

occupant and his risk was, therefore, not covered by the said Insurance policy.

14. Having regard to the provisions of Section 147(1) of the Act read with Section 149(1) of the Act, there was no statutory liability to cover the risk of any passenger carried in the said Chassis either gratuitously or by accepting fare from him, travelling alone or with goods. In the circumstances, as held by the Honourable Apex Court in the case of National Insurance Company Ltd. Vs. Rattani and others (AIR 2009 S.C. 1499), the Insurance Company was not liable to cover the risk of the deceased illegally travelling through the said Chassis. No liability was, therefore, liable to be fastened against the Insurance Company. The impugned judgment and award passed against the Insurance Company, thus, deserves to be set aside.

15. The record shows that the Insurance Company was directed to deposit the entire amount of the award along with the interest accrued thereon and, accordingly,

the Insurance Company has deposited the said amount. The record further shows that respondent no.1 i.e. the claimant was permitted to withdraw an amount of Rs.50,000/- from the deposited amount and the balance amount was directed to be invested in Fixed Deposit Receipt till decision of the appeal. In view of the conclusions recorded by me, the amount so deposited by the Insurance Company is liable to be refunded to it and liberty needs to be given to the appellant Insurance Company to recover the amount from the owner of the offending vehicle which has been withdrawn by the claimant out of the said deposited amount.

16. In the result, the following order is passed:

ORDER

1. The impugned award passed against the appellant Insurance Company stands set aside. Consequently, Motor Accident Claim Petition No.245/1998 stands dismissed against the appellant Insurance Company.

2. The amount deposited by the appellant Insurance Company in the present appeal shall be refunded to the appellant Insurance Company along with the interest accrued thereon.

3. It would be open for the appellant Insurance Company to recover from respondent no.2 i.e. the owner of the offending chassis the amount of Rs.50,000/- which has been withdrawn by the claimant under the orders of this Court from the amount deposited by the Insurance Company in this Court.

The First Appeal (No.36 of 2004) stands allowed in aforesaid terms.

(P.R.BORA)
JUDGE

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