IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

FIRST APPEAL NO. 1332 OF 2014

Makrand S/o. Shamrao Kadam
Age: 37 years, Occ. Agri.,
R/o. Lakhangaon, Tq. Ausa,
Dist. Latur.

(Owner of the vehicle MH-24-A-2297)

...APPELLANT
(Orig. Opponent No.1)

VERSUS

1. Ramdas S/o. Alu Pawar,
Age: 44 years, occu: Labour,
R/o. Yelda, Tq. Ambajogai,
Dist. Beed.

2. Anjana D/o. Ramdas Pawar,
Age: 18 years, occu: Nil,
R/o. Yelda, Tq. Ambajogai,
Dist. Beed.

3. Samla D/o. Ramdas Pawar
Age: 16 years, Occu. :Nil,
R/o. Yelda, Tq. Ambajogai,
Dist. Beed

4. Shravan S/o. Ramdas Pawar
Age: 14 years, occu: Nil,
R/o. Yelda, Tq. Ambajogai,
Dist. Beed

Respondent Nos. 3 & 4 are minor
U/Guardian of Resp. No.1
Ramdas s/o. Alu Pawar
R/o. Yelda, Tq. Ambajogai,
Dist. Beed

5. Shamrao S/o. Girjappa Jagdale
Age: 33 years, Occu: Truck Driver,
R/o. Iti, Tq. Renapur, Dist. Latur,
At Present R/o. Kapilnagar,
Khadgaon Road, Latur

6. United India Assurance Com. Ltd.
Through Branch Manager,
Infront of Gorakshan,
Main Road, Latur
(Insurer of the vehicle MH-24-A-2297)
Policy No.230603/31/07/02/00009170)

...RESPONDENTS

(Resp. No.1 to 4 Ori. Claimants)
(Resp. No.5 &6 Orig.
Opponents No.2 & 3)

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Mr. Suhas D. Ghute, Adv. for Appellant.
Mr. Amit S. Deshpance, Adv. for Respondent Nos. 1 to 4.
Mr. S.C.Swami, Adv. for Respondent No.5.

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CORAM: P.R.BORA, J.

DATE : AUGUST 1st, 2017

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ORAL JUDGMENT:

1. The present appeal is filed against the judgment and award passed by the Motor Accident Claims Tribunal at Latur in M.A.C.P.No.272/2008 decided on 25th of April, 2013. The aforesaid Claim Petition was filed by the present respondent nos. 1 to 4, claiming compensation on account of death of one Gangabai alleging the same to have been caused in a vehicular accident happened on 7.4.2011 having

involvement of a truck bearing registration No.MH-24-A-2297 owned by the present appellant and insured with respondent no.6 Insurance Company. The claimants had alleged that the accident happened because of rash and negligent driving of the driver of the offending truck and they have, therefore, claimed compensation of Rs.4,00,000/- (Rs. four lakhs) from the driver owner and insurer of the said truck.

2. The petition was resisted by the respondents on various grounds. The Insurance Company had also opposed the petition and raised the ground of breach of policy condition by the owner of the vehicle. It was the contention of the Insurance Company that the owner of the insured truck has carried passengers in the goods vehicle and, as such, was not liable to indemnify the insured. The Tribunal, after having assessed the oral and documentary evidence, held the claimants entitled for total compensation of Rs.3,37,000/- jointly and severally from the driver ad owner of the offending truck and exonerated the Insurance Company from its liability to pay the amount of compensation. Aggrieved thereby, the owner has filed the present appeal.

3. Heard learned Counsel appearing for the appellant.

Learned Counsel submitted that the Tribunal has erred in recording a finding that the Insurance Company has established breach of policy condition by the present appellant. Learned Counsel submitted that no positive evidence was adduced by the Insurance Company to prove breach of the policy condition by the owner and, as such, the Tribunal could not have recorded a finding that the breach of policy condition was proved by the Insurance Company and, consequently, should not have exonerated the Insurance Company from its liability to indemnify the insured. Learned Counsel further submitted that the Insurance policy was clearly indicating that through the said truck six employees were permitted to travel and their risk was fully covered by the insurance policy. Learned Counsel submitted that the aforesaid aspect has been ignored by the learned Tribunal which has resulted in passing the impugned award, causing injustice to the present appeal. Learned Counsel, therefore, prayed for allowing the appeal and to hold the respondent no.2 Insurance Company liable to indemnify the insured and to pay the amount of compensation as awarded by the Tribunal to the claimants for and on behalf of the present appellant.

4. I have carefully considered the submissions

advanced by the learned Counsel appearing for the appellant. I have perused the impugned judgment. In paragraph no.10 of the judgment, learned Tribunal has discussed the issue as about the alleged breach of policy condition by the owner of the vehicle. I deem it appropriate to reproduce hereinbelow entire said paragraph which reads thus:

> "10. At this stage, the learned Advocate for respondent No.1 vehemently argued before me that Insurance cover was also for six employees of respondent No.1 Premium was paid by respondent No.1 for the same. And, therefore, Insurance company is liable to pay compensation to the claimants and indemnify the insurer, i.e. respondent no.1. I found no substance in this contention. It has brought on record through the oral and documentary evidence that deceased Gangubai was not employee of respondent No1. On the contrary, she was employee of sugar cane factory and working for Mukadam Shivaji Alu Pawar. this fact is deposed by Shivaji Alu Pawar on oath before the Court. He stated that he supply the sugarcane cutting laourers to Manjara Sahakari Sakhar Karkhana. Deceased Gangubai was one of them. There was an agreement between he himself and Manjara Karkhana. From his evidence it seems that Gangubai was employee of Mukadam Shivaji Alu Pawar and not that of respondent No.1 Makrand. Even respondent No.1 has admitted this fact in his written statement. Now he cannot say that Gangubai was his employee. He has denied this fact in his written statement."

From the discussion made by the Tribunal, it appears that a case was sought to be advanced that deceased Gangubai was an employee of the owner of the truck i.e. the present appellant and, as such, her risk was covered by the Insurance policy. The Tribunal has, however, turned down the said contention observing that from the evidence on record it was undoubtedly proved that the deceased was an employee of the sugar factory and working with some Mukadam and was not employee of the present appellant. Nothing has been brought on record to show that the aforesaid finding recorded by the Tribunal is against the evidence on record or has been incorrectly recorded. The appellant has failed to bring on record any evidence to show that deceased Gangubai was in his employment. As such, the only conclusion which emerges is that the deceased Gangubai at the relevant time was travelling from the offending truck which was admittedly a goods truck as a passenger. The risk of the deceased was thus not covered by the insurance policy. It does not appear to me that the Tribunal has committed any error in recording a finding that breach of conditions of policy by the owner was proved and, as such the insurance company was not liable to indemnify the insured.

The appeal being devoid of substance deserves to be dismissed and is accordingly dismissed without any order as to the costs. Civil Applications, if any, stand disposed of.

(P.R.BORA)
JUDGE

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AGP/1332-14fa