

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

FIRST APPEAL NO. 3736 OF 2016

NEW INDIA ASSURANCE COMPANY LTD.
VERSUS
DATTATRAYA BHAGUJI VALAVE AND OTHERS

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Advocate for Appellant : Mr Kadethankar Ajit B.
Advocate for Respondents : Mr R.K.Temkar

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CORAM : V.K. JADHAV, J.
Dated: March 02, 2017

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and Award passed by the Member, Motor Accident Claims Tribunal, Sangamner in MACP No.7/2011, the original respondent insurer has preferred this appeal.
3. Brief facts, giving rise to the present appeal are as under :-
 - a] On 3.11.2010 the work of threshing maize-crop with the help of Threshing Machine was going on in front of house of the petitioner. The said Threshing Machine was attached to the tractor which was

belonging to respondent no.1 owner. Deceased Manisha was working on the said Threshing Machine. The Threshing Machine was being operated with the help of tractor which was in stationary condition and power was being transmitted to the said thresher. At the relevant time, deceased Manisha was collecting the corn-ear of maize, which had fallen below the Threshing Machine. In that process, her sari and the piece of cloth which was tied around her head entangled in connecting rod. As soon as her sari and the cloth entangled in the connecting rod, Manisha herself started to revolve around that connecting rod. In consequence of which, Manisha sustained grievous injuries. Her bones were also broken in pieces and she died on the spot.

b] Legal Representatives of deceased Manisha approached the Tribunal by preferring MACP No.7/2011 for grant of compensation under various heads. It has been contended in the claim petition that, owner of the tractor and Threshing Machine had not taken due care of affixing safety guard around the connecting rod and

therefore, the driver of the tractor and respondent no.1 are responsible for causing the accident.

c] Respondent no.1 owner has not filed his written statement and the claim petition ordered to proceed without his written statement.

d] The appellant insurer has strongly resisted the claim petition by filing his written statement. Appellant insurer admitted that, said tractor is insured with it under the commercial policy and tractor was to be used for agricultural purpose only. It has been contended that, there was no negligence on the part of the driver of the tractor. The appellant insurer has denied the liability to pay compensation to the claimants. The learned Member of the Tribunal partly allowed the claim petition and thereby directed the respondents to pay compensation of Rs.5,86,000/- jointly and severally inclusive of No Fault Liability amount to the claimants. Hence, this appeal.

4. The learned counsel for the appellant submits that, the appellant insurer has challenged the judgment

and award passed by the Tribunal only on the ground that deceased Manisha sustained injuries due to entanglement with Threshing Machine. Same does not appear to be a motor vehicular accident in order to attract the provisions of Motor Vehicles Act, 1988 to claim the compensation. Learned counsel submits that, the tractor insured with the appellant was not involved in the accident and said mishap could not be said to be a motor vehicular accident. Learned counsel submits that, the claimants may have other remedy under the provisions of the different acts, however, the claim petition itself is not maintainable under the provisions of Motor Vehicles Act, 1988.

5. Learned counsel for respondents-claimant submits that, admittedly, power of propulsion was being transmitted from the said tractor to the Thresher and during the use of the same, the accident had taken place. Death of Manisha was result of an accident arising out of use of motor vehicle tractor and the learned Member of the Tribunal has rightly held the appellant insurer is liable to pay the compensation

alongwith respondent no.1.

6. Learned counsel in order to substantiate his contentions, places his reliance on Krishnaji @ Kisanji Ramaji Tadas Vs. Umesh Rambhau Shrirame and others reported in 2015 (6) Mh.L.J. 334.

7. On careful perusal of the pleadings, the evidence and judgment and award passed by the Tribunal, it appears that, at the time of the accident, said Threshing Machine was being operated on power of propulsion transmitted to the said thresher machine from the tractor. Deceased Manisha was working on that Threshing Machine. Though, tractor was in stationary condition, power was being transmitted to the said Threshing Machine through Tractor's running engine. Deceased Manisha while collecting corn-ear of maize, her sari and piece of cloth tied around her head entangled in the connected rod. It has also come in the evidence that, the driver of the tractor had gone away after starting of the tractor and Threshing Machine. The original claimant no.1, who happened to be the husband

of deceased Manisha has deposed that there was no safety guard around connected rod and the accident had occurred because of that. Though, he has not seen accident personally, however, admittedly, said work of Threshing on maize crop was going on in his land. Furthermore, original respondent no.1 owner of the tractor has examined himself on oath at exh.41, and admitted that there has been a connected rod between the Tractor and Threshing Machine and there should have been a safety guard (metal grill) around the connected rod. He has further admitted that, it was his mistake or fault that there was no such safety-guard to his Tractor or Threshing-Machine. Thus, rather admitted position that, said threshing machine was being used on power being transmitted from the tractor without any safety guard.

8. In a case *Krishnaji Vs. Umesh* (supra) relied upon by the learned counsel for respondent original claimants, this Court at Nagpur Bench had an occasion to deal with the similar point. By giving reference to a case of *United India Insurance Co. Ltd., Vs. Rajendra*

and others. reported in (2010) TAC 47 (M.P.) and United India Insurance Co. Ltd., Vs. Anandi Devi and others reported in 2010 ACJ, 1002 in paragraph no.13 this court has made following observations :-

“13. In view of the aforesaid decisions and the fact that the evidence on record indicates that power of propulsion was being transmitted from the tractor to the thresher during use of which the accident took place, it is held that the accident in which respondent no.1 received injuries on his right hand was a result of an accident arising out of use of a motor vehicle. Hence, point no.1 is answered by holding that the accident in question had arisen out of use of a motor vehicle.”

9. This court in the above cited case has referred the definition of the motor vehicle or vehicle and tractor.

The same are reproduced herein below :-

Section 2(28) reads thus :-

“(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimeters.”

10. From said definition it is clear that any mechanically propelled vehicle adapted for use on road to which the power of propulsion is transmitted from an

external source is treated as a motor vehicle.

Section 2(44) of the said Act defines “tractor” to mean a motor vehicle which is not itself constructed to carry any load other than equipment used for the purpose of propulsion.

11. In paragraph no.11 of the judgment this court has held that, considering the provisions of section 2 (28) along with section 2 (44) of the said Act, it is clear that a thresher to which the power of propulsion is transmitted from an external source, namely a tractor, would be a motor vehicle for the purposes of the said Act.

12. In view of above discussion and the observations made by this Court in the afore cited case, I do not find any substance in the present appeal. Appeal is thus liable to be dismissed. Hence, following order.

ORDER

1. First Appeal is hereby dismissed with costs.
2. First appeal accordingly disposed of.

sd/-

(V.K. JADHAV, J.)

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aaa/-