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

FIRST APPEAL NO. 32 OF 2014

THE NEW INDIA ASSURANCE CO. LTD.
VERSUS
PADMINBAI MANIKA JHAGDE AND OTHERS

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Advocate for Appellant : Mr. Dhananjay P. Deshpande.
Advocate for Respondent Nos.1 & 2 : Mr. H. I. Pathan.
Advocate for Respondent No.3 : Mr. P. V. Ambade.

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CORAM : **V. K. JADHAV, J.**
RESERVED ON : 15th February, 2017.
PRONOUNCED ON : 15th March, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Nanded dated 27th February, 2013 in MACP No.508 of 2009, the original Respondent / Insurer has preferred this appeal.

3 Brief facts giving rise to the present appeal are as follows:

i) Deceased – Lalba was working as a labour on the tractor bearing registration No.MH-26-C-9423 and trolley bearing registration No.MH-26-C-8887. The said tractor and trolley are owned by Respondent No.1. Deceased was the labour for loading and unloading the sand and other construction material on monthly salary of Rs.4,000/-. On 5th November, 2008, the said tractor alongwith trolley was proceeding for transportation of sand for construction of farm house and well of Respondent No.1's agricultural land. The driver of the said vehicle was driving it in a high speed and in rash and negligent manner. Due to excessive speed, the tyre of the tractor burst and the vehicle turned turtle. In consequence of which, deceased Lalba sustained severe injuries. He was immediately shifted to Government Hospital, Nanded and therefrom shifted to J. J. Hospital, Mumbai. However, on 15th November, 2008, he succumbed to the injuries while under treatment. The legal representatives of deceased Lalba approached to the Motor Accident Claims Tribunal, Nanded by filing MACP No.508 of 2009 for grant of compensation under the various heads.

ii) Respondent No.1 / owner has failed to file his written statement and therefore, the hearing of the claim petition ordered to proceed without his written statement. The Appellant / Insurer has strongly resisted the claim by filing the written statement. It has been contended that the owner of the tractor and trolley committed breach of the policy conditions by carrying fare paying passengers or gratuitous passengers in the aforesaid vehicle.

iii) The Claimants have adduced oral and documentary evidence in support of their contentions. The Appellant / Insurer has also examined the Manager of the company.

iv) The learned Member of the Tribunal vide its impugned judgment and award dated 27th February, 2013 partly allowed the claim petition and directed the Respondents to pay jointly and severally an amount of Rs.4,14,000/- inclusive of NFL compensation alongwith interest @8% from the date of application to the Claimants. Being aggrieved by the same, the original Respondent / Insurer has preferred this appeal.

4 The learned counsel for the Appellant / Insurer submits that the said tractor and trolley required to be used for agricultural purpose only. The Appellant / Insurer has not accepted any premium covering the risk of deceased, who alleged to be travelling in the said trolley as a labour. The learned counsel for the Appellant / Insurer submits that in terms of the policy, the premium is accepted against the third party risk, damage to the trolley, compulsory personal accident to owner-cum-driver and WC employee. The learned counsel submits that in terms of the policy, premium was accepted for WC employee one and the same covers the risk of the paid driver. The learned counsel submits that the Appellant / Insurer is not liable to pay any compensation to the deceased, who was allegedly travelling in the trolley as a labour. However, the learned Member of the Tribunal has not considered the same and erroneously fastened the liability on the Appellant / Insurer jointly and severally alongwith the Respondent / owner. The Appellant /

Insurer has restricted his submissions on this point alone and he has not made any submissions on the quantum of compensation.

5 The learned counsel for the Appellant / Insurer in order to substantiate his submissions placed reliance in the case of ***Oriental Insurance Co. Ltd., Vs. Brij Mohan and others***, reported in, ***2007 ALL SCR 1736***.

6 The learned counsel for the Respondent / original Claimant submits that at the time of accident, the aforesaid tractor attached with trolley was being used for the agricultural purpose only. The Respondent / owner has not contested the claim petition by filing his written statement. It is therefore, not denied that the deceased Lalba was working as a labour on monthly salary of Rs.4,000/- for loading and unloading the construction material placed in the trolley. It is also not disputed that the said construction material was being carried to the agricultural land of the Respondent / owner for the purpose of construction of farm house and well. The learned counsel submits that by any stretch of imagination, it cannot be inferred that at the time of accident, the said tractor attached with trolley was being used commercially for other purposes than

mentioned in the policy. There is no breach of the policy terms as to the limitation as to use. The learned counsel submits that in terms of the policy, coverage to one employee is given and there is no mention in the policy that coverage is only in respect of the paid driver. The learned counsel submits that the tractor attached with trolley falls under Section 2(14) of the Motor Vehicles Act, 1988 as a "goods carriage" and consequently, it falls under the "transport vehicle" as defined under Section 2(47) of the Motor Vehicles Act, 1988. The learned counsel submits that under the "Act Policy", the insurance company is liable to pay the compensation in respect of death or bodily injury to persons, who are collies or employees, who are travelling in the tractor-trailer to the extent provided for in Section 2(47) of the Motor Vehicles Act, 1988. The insurance company is liable to pay the compensation in respect of death of or bodily injury to employes carried in the tractor-trailer, subject to the maximum of six and the liability is limited to the compensation payable under the provisions of the Workman's Compensation Act.

7 The learned counsel for the Respondents in order to substantiate his contentions placed reliance on the following cases:

a) ***New India Assurance Company Vs. Anasurya***, decided by the Andhra Pradesh High Court on 25th January, 1989 (Coram: K. Ramaswamy, J.)

b) ***United India Insurance Co. Ltd., Vs. Shankar Lal and another***, reported in, ***2013 ACJ 1878***.

c) ***National Insurance Company Ltd., Vs. Renuka and others***, reported in, ***2010 (2) T.A.C. 234*** (Karnataka)

d) ***Balaso Narasu Chavare and another Vs. Sudhakar V. Sambare and another***, reported in, ***2004 (4) MAH.L.J. 256***.

e) ***Nagashetty Vs. United India Insurance Co. Ltd. and others***, reported in, ***(2001) 8 Supreme Court Cases 56***.

f) ***M/s. Natwar Parikh and Co. Ltd. Vs. State of Karnataka and others***, reported in, ***AIR 2005 Supreme Court 3428***.

g) ***New India Assurance Co. Ltd. Vs. Shaikh Afsar s/o Sk. Habib and others***, decided by this Court on 3rd December, 2015 in First Appeal No.2516 of 2015

(2016(6) LJSOFT 280).

h) ***Oriental Insurance Company Limited, Bangalore, Vs. Hanumanthappa***, decided by the Karnataka High Court on 10th February, 1992 (Coram: M. Rama Jois, N. Y. Hanumanthappa, JJ.)

i) ***Kishan Gopal and another, Vs. Lala and others***, reported in, ***2014 (3) MAH.L.J. (S.C.) 560***.

8 The learned counsel for the Respondent / owner has also advanced his submissions in the similar line as that of the learned counsel for the Respondents / Claimants and placed his reliance on the aforesaid citations.

9 On careful perusal of the pleadings, the evidence led by the parties and the judgment and award passed by the learned Member of the Tribunal, it appears that deceased Lalba was working as a labour for loading and unloading the construction material placed in the trolley attached to the tractor. It is also not a disputed position that in terms of the provisions of Sections 2(40), 2(44) and 2(46), the tractor attached with the trolley falls in the definition of "goods carriage". It is also a part of record that at the

time of accident, the aforesaid vehicles were not being used for commercial purpose. It appears from the evidence that the trolley was loaded with construction material being required for the purpose of construction of farm house and well in the agricultural land of the Respondent / owner.

10 In the case of *Oriental Insurance Co. Ltd., Vs. Brij Mohan and others* (supra) relied upon by the learned counsel for the Appellant, in the facts of the said case, the Claimant was travelling in the trolley as a labour for digging the earth and loading and unloading the trolley with the said earth attached to the tractor. The insurance company has raised a defence that the tractor was not being used for the agricultural work. The risk of such person is not covered under the policy. In the instant case, the facts are altogether different and the case cited above, cannot be made applicable to the facts and circumstances of the present case.

11 On careful perusal of the oral evidence of the witness examined by the Appellant / Insurer, it appears that the premium is accepted under the policy to cover the risk of third party basic, premium for trailer, compulsory personal acceptance to owner cum

driver and W.C.T. employee one. Even though it is not specifically mentioned in the policy that the premium about W.C. employee is accepted in respect of the driver of the tractor, the witness Manoj Talnikar has stated so before the Tribunal. He has accepted in his cross-examination that it is not so mentioned in the policy. However, according to him, the sitting capacity of the tractor is only one person and if the premium of 1 WC is accepted, the same would be only in respect of the paid driver alone and not in respect of any other employee including the labours. However, the same witness has accepted that for loading and unloading the articles in the trolley, there is a necessity of engaging the labours. In the cases of *Oriental Insurance Company Limited, Bangalore, Vs. Hanumanthappa* (supra), *New India Assurance Co. Ltd. Vs. Shaikh Afsar s/o Sk. Habib and others* (supra), and *M/s. Natwar Parikh and Co. Ltd. Vs. State of Karnataka and others* (supra) relied upon by the learned counsel for Respondent / Claimant, in the identical facts, it is held that the Insurer is liable under the policy to pay the compensation.

12 In the case of *United India Insurance Co. Ltd., Vs. Shankar Lal and another* (supra) the Rajasthan High Court has also

considered that in absence of any specification in the policy about the coverage of the liability in respect of the driver of the tractor alone, the insurance company is liable to pay the compensation to the employee working on the trolley attached to the tractor at the time of accident.

13 In view of the observations made by the Supreme Court and the High Courts in the above cited cases and the peculiar facts and circumstances of the present case, I do not find any substance in the present appeal. The appeal is thus, liable to be dismissed. Hence, the following order:

O R D E R

I. The appeal, is hereby dismissed with no order as to the costs.

II. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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