IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1642 OF 2010

Shaikh Umar s/o Shaikh Mohinuddin,
Age 42 years, Occ. Business,
r/o Jikthan,
Tal.Gangapur, Dist. Aurangabad.

...**APPELLANT**
(Orig.Resp.No.2)

VERSUS

1. Ansar s/o Mohd.Gafar
(since deceased through legal heirs)

1.1 Gafar s/o Babanji Bagwan,
Age 47 years, Occ. Labour,
R/o. Partur,
Dist. Jalna.

1.2 Julekhabi w/o Gafar Bagwan,
Age 46 years, Occ. Household,
R/o. Partur,
Dist. Jalna.

2. New India Insurance Company,
Through its Branch Manager,
Jalna.

3. Somnath s/o Apa Karde,
Age 27 years, Occ. Driver,
R/o. Gurudhanora,
Tal.Gangapur,
Dist. Aurangabad.

...**RESPONDENTS**
(No.1 Orig.Claimants,
Nos. 2 & 3 Orig.Resp.
Nos. 1 & 3)

Mr. D.P.Palodkar, Advocate for appellant.
Ms.Geetanjali Deshpande, Adv.,for respondent nos. 1/1 and 1/2.
Shri V.N.Upadhye, Adv., for respondent no.2.

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CORAM: P.R.BORA, J.

DATE : June 29th, 2017

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Date of reserving the Judgment: 06/06/2017
Date of pronouncing the Judgment: 29/06/2017

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JUDGMENT:

1. The appellant has filed the present appeal against the judgment and award dated 6th of May, 2010, passed by the Motor Accident Claims Tribunal, Jalna, in M.A.C.P. No.184/2008.

2. The aforesaid claim petition was filed by one Ansar s/o Mohammad Gafar Bagwan, claiming compensation for injuries caused to him in a vehicular accident happened on 20th of June, 2008, having involvement of a Tata Truck bearing registration No.MH-20-AT-2726 owned by present appellant and insured with respondent no.2. During pendency of the claim petition,

original claimant Ansar died on 2nd of May, 2009, and his legal heirs i.e. his parents prosecuted the claim thereafter and claimed compensation alleging that deceased Ansar died because of the injuries caused to him in the said accident happened on 20th of June, 2008. Appellants, hereinafter, are referred to as Claimants.

3. It was the case of the claimants that deceased Ansar had hired insured truck for bringing mangoes from Dharampur in Gujrat and at the relevant time deceased and his friend were travelling by the said truck towards Dharampur from Aurangabad. The accident happened near Niphad in district Nashik.

4. The claim petition was resisted by the Insurance company on various grounds. The main defense raised by the Insurance Company was that deceased Ansar was travelling in the insured truck as a passenger and, as such, his risk was not liable to be covered by the Insurance policy. The another defense was that the Driver of the offending truck was not holding valid driving license on the date of accident.

5. The claimants adduced oral as well as documentary evidence before the Tribunal to substantiate their claim. Neither the owner of the vehicle nor the insurer of the vehicle adduced any oral evidence. Learned Tribunal, after having assessed the oral as well as documentary evidence brought before it, allowed the claim petition partly holding the claimants entitled for the total compensation of Rs.4,42,000/- and directed the owner and driver of the offending vehicle to pay the said amount of compensation to the claimants with interest at the rate of 8 per cent per annum from the date of institution of the claim till realization. The Insurance company was exonerated from the liability to indemnify the insured. Aggrieved thereby, the owner of the insured vehicle has filed the present appeal.

6. Shri D.P.Palodkar, learned counsel appearing for the appellant, assailed the impugned judgment and award on various grounds. The main thrust of his argument was that when a plea was raised by the Insurance Company, denying its liability, it was necessary for the Insurance Company to have proved the terms of policy.

Learned Counsel submitted that the Insurance Company admittedly did not adduce any oral evidence to substantiate the defense raised by it nor has placed on record the document of policy containing the terms and conditions of the said policy and, as such, the Tribunal was in error in exonerating the Insurance Company from its liability to indemnify the insured.

7. Shri Palodkar, learned Counsel, further submitted that the Tribunal has erred in recording a conclusion that claimant Ansar s/o Mohd. Gafar suffered death because of the injuries caused to him in the road accident happened on 20th of June, 2008, without any cogent and sufficient evidence therefor. The learned Counsel, invited my attention to the admissions given by PW No.1 Gafar Bagwan, father of deceased Ansar, in his cross examination, whereby he has candidly admitted that his son did not follow the instructions given to him by the Doctor after he was discharged from the hospital and had he followed the said instructions, he would not have suffered the death. Learned counsel submitted that from the evidence of PW No.1, it is quite clear that deceased

Ansar died because of his own negligence and not as a result of the injuries caused to him in the alleged accident. Learned Counsel submitted that deceased Ansar died after about 11 months of the alleged accident and there is no such evidence on record so as to arrive at the conclusion establishing any nexus between the death of deceased Ansar and the injuries caused to him in the alleged accident. Learned Counsel submitted that in the above circumstances, in fact no compensation was liable to be awarded and the Tribunal has grossly erred in awarding the compensation, ignoring the evidence on record.

8. Shri Palodkar further submitted that the conclusion recoded by the Tribunal that the deceased Ansar was travelling in the insured vehicle at the relevant time as a passenger and not as the owner of the goods is also unsustainable in premise of the evidence on record. Learned Counsel submitted that since beginning it was the contention of the claimants that deceased Ansar along with his friends had hired the insured truck for bringing mangoes from Dharampur in Gujrat and when the accident happened deceased Ansar and his friends were proceeding

by the said truck towards Dharampur, Gujrat. Learned Counsel submitted that deceased Ansar was thus travelling in the insured truck at the relevant time as the owner of the goods and his risk was fully covered by the Insurance policy. Learned Counsel submitted that the Tribunal has failed in appreciating the aforesaid evidence and has erroneously exonerated the Insurance Company from its liability to indemnify the insured. The learned Counsel, therefore, prayed for setting aside the impugned award and, consequently, to allow the claim petition.

9. Shri V.N.Upadhye, learned Counsel appearing for the Insurance Company, resisted the submissions made on behalf of the appellant. Learned Counsel submitted that the certificate of insurance was filed on record by the claimants themselves and is very well existing on record at Exh.39 as well as at Exh.55. Learned Counsel further submitted that though it was the contention of the claimants that deceased Ansar at the relevant time was travelling by the insured truck as the owner of the goods, the evidence on record shows that the truck was empty when the accident happened. Learned

Counsel further submitted that it has also come on record through the evidence of the claimants themselves that when the accident happened, in addition to deceased, Ansar, his friend, and seven other passengers were travelling in the said truck and they all had boarded the truck at different places as the passengers in the said truck. Learned Counsel submitted that the Tribunal has not committed any error in holding that deceased Ansar was travelling by the insured truck as a passenger. Learned Counsel further submitted that the evidence on record was sufficient for arriving at the conclusion that the owner and the driver of the truck have committed breach of the policy conditions by carrying the passengers in the goods truck. Learned Counsel submitted that the Tribunal has not committed any error in exonerating the Insurance Company from its liability to indemnify the insured. Learned Counsel, therefore, prayed for dismissal of the appeal.

10. Learned Counsel appearing for the original claimants prayed for passing appropriate orders.

11. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned judgment and the evidence on record. I would like to first deal with the issue whether from the evidence on record it can be held that deceased Ansar was travelling in the insured truck at the relevant time as the owner of the goods and not as a passenger. It is true that since beginning it was the contention of the claimants that deceased Ansar along with his friend Anwar, PW 2, had hired the insured truck for bringing mangoes from Dharampur, Gujrat. Evidence of PW 1 Gafar Khan may not be of much help on this issue since he was not having any personal knowledge of facts involved in the matter. The evidence of PW 2 Anwar, however, may be relevant since he was stated to have hired the insured truck along with deceased Ansar. No doubt in his examination in chief, he has stated that insured truck was hired by him and deceased Ansar for bringing mangoes from Dharampur in Gujrat and freight was fixed at Rs.10,000/- out of which Rs.5,000/- were paid to the owner of the insured truck in advance. However, in light of the fact so stated by PW 2

when I read the written statement filed by original respondent nos. 2 and 3 i.e. the driver and owner of the insured truck, it is revealed that except the fact that deceased was travelling in the insured truck in the capacity as owner of the goods, other facts are denied by them for want of knowledge. Moreover, the aforesaid fact stated by PW 2 Anwar has not been corroborated by any other evidence. On the contrary, in the cross examination of PW 2, it has come on record that five more persons were travelling by the said truck. PW 2 Anwar in his cross examination has stated that he was unable to answer whether the other persons who were travelling by the said truck had already boarded the said truck or otherwise. Further, as has been rightly observed by the Tribunal, no evidence has been brought on record to substantiate the contention that the amount of Rs.5,000/- was already paid to the owner of the truck by way of advance. The owner of the truck i.e. present appellant could have been the best person to depose in this regard, however, he had kept silence on the issue. The fact so stated by deceased Ansar and supported by PW 2 Anwar could have been corroborated by the owner of the truck who was party to the claim petition, however, on this aspect, the owner of the truck has not taken any stand. On the contrary, in the written statement except admitting that deceased was travelling in the insured truck as an owner of the goods nothing further has been accepted by the owner of the truck. Had the fact as aforesaid would have been accepted and corroborated by the owner of the truck, and had he deposed before the Court or would have admitted in his written statement that his truck was hired for the purpose of bringing mangoes by deceased Ansar for freight of Rs.10,000/- and as stated in the petition Rs.5,000/- was received to him by way of advance, there was no reason to discard or disbelieve the fact so stated in the petition. However, as discussed by me hereinabove, there is absolutely no evidence in this regard. As such, it does not appear to me that the Tribunal has committed any error in recording a finding that the claimants have failed in proving that deceased Ansar was travelling as owner of the goods in the insured truck when the alleged accident happened.

12. Another objection raised by the appellant that

the claimants have failed in proving that deceased Ansar died as a result of injuries caused to him in the alleged accident, is also unsustainable. I need not to elaborately discuss the evidence on record; suffice it to say that from the medical evidence which has come on record it can reasonably be inferred that deceased Ansar died as a result of injuries caused to him in the alleged accident. It is true that the father of deceased Ansar had given certain admission in the cross examination to the effect that the deceased Ansar did not follow the instructions given by the Doctor and had he followed the said instructions, perhaps, he would have survived. However, merely because of the said admission it is difficult to hold that Ansar did not die as a result of injuries caused to him in the alleged accident. The Tribunal has very rightly observed that the accidental injuries were the origin for long treatment of the deceased; the deceased was bed ridden for one year and developed so many complications and infections and ultimately succumbed to the accidental injuries. It is evident that the ultimate cause of death was the injuries caused to the deceased in the alleged accident. I, therefore, do not find any substance in the objection raised on behalf of the appellant that deceased Ansar did not die because of the accidental injuries.

13. Now falls for my consideration the objection raised by the appellant that it was the burden on the Insurance Company to prove that the owner of the insured truck had committed the breach of the terms of the policy by adducing necessary evidence in that regard and by placing on record the said insurance policy. Relying on the judgment of this Court in the case of New India Assurance Co.Ltd., Nagpur Vs. Rukhmabai wd/o Laxman Charde and others (2009 (5) Mh.L.J. 833), it was vehemently argued by Shri Palodkar, that in absence of the policy on record and any evidence adduced by the Insurance Company before the Tribunal to substantiate the defense raised by it as about the breach of the terms of the policy conditions by the owner of the truck, the Tribunal could not have exonerated the Insurance Company from its liability to indemnify the insured.

14. The argument so made as above is also liable to be rejected. The judgment relied upon by the learned Counsel cannot be of any help for the present appellant to

support the case pleaded by him. It is not disputed that the insured vehicle is a goods truck. As has been elaborately discussed by me hereinabove, the claimants have failed in proving that deceased Ansar was a person with goods in the insured truck when the alleged accident happened. As has been discussed by me, it has not been proved that the insured truck was hired by deceased Ansar and that the owner of the truck had received an advance of Rs.5,000/-. Once it is held that the deceased was not a person travelling in the insured vehicle as an owner of the goods, the only inference which emerges is that the deceased was travelling as a passenger in the goods truck. Section 147 of the Motor Vehicles Act does not require that the insurance policy shall cover the risk of a passenger travelling in the goods truck. Since Insurance Company was not statutorily liable to have the insurance policy covering the risk of the passenger in goods truck, it was not necessary for the Insurance Company to place on record the terms of the insurance policy so as to prove the breach of the terms of the said policy by the insured. On the contrary, if it was the case of the insured that the insurance policy purchased by him was covering the risk of the deceased, the burden was on the insured to place on record the policy of insurance. The facts in the case New India Assurance Co.Ltd., Nagpur Vs. Rukhmabai wd/o Laxman Charde and others (cited supra), relied upon by the appellant were quite different and, therefore, the decision in the said case cannot be applied in the facts of the present case. In its written statement filed before the Tribunal the Insurance Company had raised a specific plea that it was not statutorily liable to cover the risk of the deceased who was travelling as a passenger in goods truck. In the premise of the plea so raised if it was the case of the the appellant that the policy was covering the risk of the deceased, the burden was on the appellant insured to prove the said fact by bringing on record the necessary cogent evidence therefor.

15. After having considered the entire material on record, I do not find any error in the impugned judgment and award. The appeal being devoid of substance deserves to be dismissed and is accordingly dismissed. No costs.

(P.R.BORA)
JUDGE

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