IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 518 OF 2013
WITH
CIVIL APPLICATION NO. 1892 OF 2012
AND
CIVIL APPLICATION NO. 538 OF 2017

The Divisional Manager
United India Insurance Co. Ltd. .. Appellant
vs.
Sushila Eknath Pawar & Ors. .. Respondents

Mr. A. A. Joshi for Appellant.
Mr. P. B. Gujar h/f. N. S. Patil for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.
DATE : 21 MARCH 2017

P.C :

1] Heard Mr. Joshi for the appellant and Mr. Gujar h/f. Mr. Patil for respondent nos. 1 and 2. Respondent Nos. 3 and 4 are duly served.

2] Mr. Joshi, learned counsel for the appellant submits that this was not a fit case, in which, order for '*pay and recover*' could have ever been made against the appellant – Insurance Company. He submits that MACT, in the impugned award, at paragraph 10, has clearly held that the Insurance Company was not at all liable to pay any compensation and it is only the owner and driver of the tractor who were jointly and severally liable to pay the compensation amount. He submits that after record of this finding, MACT was not at all justified in making an order of *'pay and recover'*.

3] Mr. Joshi submits that in this case, the deceased was sitting on the flank of the trolley which was being pulled by the tractor. Mr.

Joshi submits that the tractor may have been insured by the Insurance Company. However, the insurance policy had made it clear that the tractor was to be used only for agricultural purposes. There is a clear breach of this term of the insurance policy. That apart, Mr. Joshi submits that the trolley, which is an independent motor vehicle was never insured by the appellant - Insurance Company. Since, in this case, the deceased was sitting on the flank of the trolley, and since, the trolley was never insured by the appellant – Insurance Company, the MACT has clearly erred in making the order for '*pay and recover*'.

4] In this case, deceased Eknath whilst travelling in a dumper / trolley, which was attached to the tractor no. MH-10-9245, met with a fatal accident on 5 April 2008. The dumper / trolley, was admittedly, attached to the tractor and was being pulled by the tractor. There is no dispute that the tractor was insured with the appellant – Insurance Company. Assuming that the insurance policy contained a term that the tractor was to be used only for agricultural purposes, at the highest, it can be said that there was a breach of such a term on the part of the insurer i.e. the owner of the tractor. That by itself, is not sufficient to denude the MACT of making orders of '*pay and recover*'. This position is made clear by the Hon'ble Supreme Court in the case of ***S. Iyyapan vs. United India Insurance Company Limited & Anr***.[1] In the present case, there is no dispute that the deceased was a third party.

5] On basis of the material on record, it is clear that the dumper / tractor trolley, on which, the deceased was found to be sitting, was not on road in its independent capacity. Admittedly, the dumper / trolley was attached to the tractor which was insured by the appellant – Insurance Company. It is the tractor, which was

1 (2013) 7 SCC 62

pulling the trolley. There is also material on record to show that it is the tractor driver who was found to be driving the tractor in a rash and negligent manner. Therefore, if the matter is considered from this perspective, it hardly matters, whether the trolley was itself insured or not with the appellant – Insurance Company. In this case, the MACT, has only made an order for '*pay and recover*'. Such an order is quite consistent with the law laid down by the Hon'ble Supreme Court in the case of *S. Iyyapan* (supra).

6] The matter can be examined from yet another perspective. If the dumper / trolley is to be regarded as an independent motor vehicle as urged by Mr. Joshi, then, on basis of the material on record, it appears that this so-called independent motor vehicle was involved in an accident on account of a tractor which was admittedly insured with the appellant – Insurance Company. There is material on record that it is the driver of the tractor who was driving the tractor in a rash and negligent manner. This means that the accident has taken place on account of the rash and negligent driving of the tractor. In such a circumstances also, the appellant – Insurance Company, cannot, deny liability. In any case, since, the MACT has only made an order for *'pay and recover'*, it is not necessary to go into this issue and examine this contention of Mr. Joshi that the trolley / dumper in the present case has to be regarded as an independent motor vehicle. Since, no other ground was urged in support of this appeal, there is no reason to interfere with the impugned award.

7] This appeal is accordingly dismissed. There shall be no order as to costs. The ad interim order granted earlier is hereby vacated.

8] In view of dismissal of appeal, civil applications do not survive and the same are disposed of accordingly.

9] The Registry to transfer the amounts deposited by the appellant – Insurance Company to the concerned MACT i.e. MACT, Islampur, where the claimants, have already instituted execution proceedings, within four weeks from today. Upon transfer, the claimants may be permitted to withdraw such amount consistent with the directions in the impugned award dated 22 December 2011.

Chandka **(M. S. SONAK, J.)**