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

FIRST APPEAL NO. 692 OF 2015

Vidya Dilip Wahule,
Aged 32 years, Occ: Housewife,
R/o Juni Basti, Badnera,
Tq. & Dist. Amravati. ..APPELLANT

VERSUS

1. Divisional Manager,
Oriental Insurance Co. Ltd.,
Divisional Office, Above
State Bank of Hyderabai,
Badnera Road, Amravati,
Tq. & Dist. Amravati.

2. Devidas Kisan Ingale,
Age Adult, Occ: Driver,
R/o. Durgwada, Tq. Murtizapur,
Distt. Akola.

3. Smt. Shubhangi Dadarao Bhatkar,
Age Adult, Occ: Owner,
R/o. Unkhed, Kasarkhed,
Tq. Murtizapur, Distt. Akola.

4. Pandurang Anandrao Tayade,
Aged Adult, Occ: Owner,
R/o. Kaulkhed, Tq. &
Distt. Akola. ..RESPONDENTS

Mr P.V. Navlani, Advocate for appellant;
Mr D.N. Kukday, Advocate for respondent No.1;
Mr S.D. Chopde, Advocate for respondent Nos. 2 to 4;

CORAM : N.W. SAMBRE, J.

DATE : 10th APRIL, 2017

ORAL ORDER :

By consent, heard finally.

2. The Motor Accident Claims Tribunal, Amravati, while dealing with Motor Accident Claim Petition No. 287 of 2009 preferred under Section 166 of the Motor Vehicles Act, 1988, framed following issues :

ISSUES	FINDINGS
(1) Whether on 26-6-2009 at 1-30 p.m. In front of petitioners house in Railway colony at Dhamangaon Fail, Murtizapur the respondent no.1 drove the tractor bearing No. MH-30/J-7224 in rash and negligent manner and committed an accident?	... Yes
(2) Whether due to the said accident, deceased Abhijeet Waghole died due to injury sustained?	... Yes
(3) Whether there is a breach of terms and conditions of insurance policy?	... Yes
(4) Whether petitioner is entitled for compensation as prayed for?	Entitled to Rs.3,00,000/- from respondent nos. 2 & 3
(5) What order?	... As per final order.

3. After appreciating the evidence on record, the tribunal has held the original respondent Nos.2 and 3 i.e. respondent Nos. 3 and 4 herein responsible for the payment of compensation as awarded vide Award dated 15th April, 2015.

4. The same is questioned by learned Counsel for the appellant-original claimant, by relying upon the judgment of the Apex Court in the matter of ***Fahim Ahmad & ors vs United India Insurance Co. Ltd. & ors***, reported in ***2014 SC 2187***, particularly the observations made in paragraphs-5,6 and 7. According to him, even if trolley is used for transporting sand, still same cannot be termed as breach of policy conditions if policy is issued under 'Kisan Policy'. He has also placed reliance upon the judgment of the Apex Court in the matter of ***Kishan Gopal and another vs Lala and others*** reported in ***2013 ACJ 2594*** so as to prevail upon this Court to form opinion that if tractor is not insured and trolley carrying sand attached thereto was insured, it has to be read down that the

accident was caused by rash and negligent driving of tractor and trolley. He would then urge that insurance company is liable to be responsible for the claim.

5. Per contra, Mr. Kukday, learned Counsel for the insurance company would oppose the claim on two grounds; (a) tractor in question was not insured and (b) trolley was used for carrying sand which is not part of agricultural activity, for which, trolley was insured under 'Kisan Policy'.

6. What could be gathered from the judgment of the Apex Court in the matter of ***Fahim Ahmad*** (supra) is, merely because trolley was used for carrying sand would not meant that tractor was put to commercial use. In the aforesaid background, the Apex Court held that breach of the insurance policy, cannot be inferred. In the second matter i.e. ***Kishan Gopal*** (supra), it is required to be noted that even if tractor was not insured, the Apex Court has observed that since the trolley was attached to the tractor which was insured, the

accident since being caused by tractor and trolley both, the claim for insurance is admissible.

7. What could be noticed from the award delivered by the tribunal that the tribunal has failed to consider the above referred position of law and has delivered judgment.

8. In view of above, in my opinion, the case for remand is made out. The judgment and order delivered by the Motor Accident Claims Tribunal, Amravati in Motor Accident Claim Petition No. 287 of 2009 decided on 15th April, 2015, as such, is not sustainable, hence same is hereby quashed and set aside. The said claim stood restored to the file of Motor Accident Claims Tribunal, Amravati.

9. Respective parties through Counsel undertake to appear before Motor Accident Claims Tribunal, Amravati on 27th April, 2017 and therefore, there is no need to issue fresh notice to the claimant and insurance company. In the meantime, issue fresh notice to original non

applicant Nos. 1, 2 and 3 intimating that the matter before learned Motor Accident Claims Tribunal will be heard on 27th April, 2017.

10. With above observations, the appeal is partly allowed. The tribunal is directed to decide the claim petition, as expeditiously as possible, in any case, preferably within a period of six months from 27th April, 2017.

(N.W. SAMBRE, J.)

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