IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.145 OF 2001
WITH
CIVIL APPLICATION NO.2442 OF 2001

The United India Insurance
Company Ltd., Through its
Divisional Office, Divisional
Manager, United Indian Insurance
Company, Aurangabad. ..Appellant

Versus

1. Indubai w/o. Arjun Patil
Age: 27 yrs, Occu.: Household.

2. Gorakh Arjun Patil
Age: 10 yrs, Occu.: Education.

3. Pravin Arjun Patil
Age: 8 yrs., Occu.: Education.

4. Kashinath Chindhu Patil
Age: 60 yrs., Occu.: Nil

5. Dwarkabai w/o. Kashinath Patil
Age: 48 yrs., Occu.: Household

Petitioners No.2 and 3 are
minors through their natural
guardian petitioner No.1
Indbai.

All r/o.Sangmeshwar, Taluka
Pachora, District Jalgaon.

6. Himmat Dhudku Sonawane
Age: 30 yrs., Occu.: Tractor Driver
R/o.Balad, Taluka Pachora,
District Jalgaon.

7. Ananda Bhatu Patil
Age: 45 yrs., Occu.: Tractor Owner,
R/o.A.P.Dhanore,
Taluka & Dist.Jalgaon. ..Respondents

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Advocate for Appellant : Mr.S.V.Kulkarni
Advocate for Respondent Nos.1 to 3 & 5 : Mr.G.V.Wani
Advocate for Respondent No.7 : Mr.M.S.Deshmukh

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CORAM : M.S.SONAK, J.
DATE : 4th JANUARY, 2018

ORAL JUDGMENT:-

1) Heard Mr.S.V.Kulkarni for the appellant. The respondents, though served, neither present nor represented. There is an endorsement on the memo of appeal that the appeal stands abated as against the legal representatives of respondent No.4 by order dated 12.10.2001.

2) Rather than going to the issue as to whether the appeal can proceed as against remaining respondents or not, Mr.S.V.Kulkarni was heard on merits of the appeal.

3) The challenge in the appeal is to the Judgment and Award dated 19.8.2000 made by the Motor Accident Claims Tribunal, Jalgaon, in Claim Petition No.363 of 1997. Operative portion of the impugned award reads as follows:-

"**O R D E R**

i. The petition is partly allowed.

ii. The respondent No.1 to 3 are jointly and severally liable to pay the amount of Rs.1,13,100/- (Rupees one lakh thirteen thousand ono hundred only) Rupees 1,63,100/- including of the amount of Rs.50,000/- on no fault basis) to petitioner alongwith interest at the rate of 12 p.c.p.a. from the date of registration of petition till realisation.

iii. Respondent No.1 to 3 should bear their own costs and proportionate costs of the petitioners.

iv. After recovery of the amount, to each of the petitioner No.4 & 5 an amount of Rs.10,000/- should be given by crossed account payee cheque, and an amount of Rs.25,000/- should be given to the petitioner No.1 Indubai by crossed account payee cheque,, and the remaining amount should be divided equally amongst petitioner Nos.2 and 3 and their shares should be invested in fixed deposits in Central Bank of India, Jalgaon for a period till they attain majority, and the petitioner No.1 Indubai will be entitled to get the quarterly interest on the aid fixed deposit amounts of the minor petitioners.

v. Award be drawn up accordingly.

Sd/-
A.N.DHUME
MEMBER, MAC TRIBUNAL
19.8.2000 JALGAON."

4) The appellant Insurance Company had been impleaded as respondent No.3 in the Claim Petition. Aggrieved by

the impugned Award to the extent it imposes liability upon the appellant, this appeal has been preferred. Mr.S.V.Kulkarni, learned counsel for the appellant submits that the Insurance Policy on the basis of which the liability has been foisted upon the appellant was a policy to cover risks arising to third parties. He submits that the Insurance Policy does not cover any liability arising out of death of the deceased, who was a labourer travelling in a Tractor/Trailer. He submits that since this aspect of the matter has not been considered by the Tribunal, the impugned award to the extent of foisting liability on the Insurance Company warrants interference. He submits that the appellant Insurance Company can have no grievance about liability being foisted upon the owner and the driver of the Tractor/Trailer, however, liability on the appellant Insurance Company in terms of the policy taken of by the owner was limited and did not extend to coverage of any liability arising out of the death of Arjun Patil. For this reason, Mr.S.V.Kulkarni submits that the impugned order may be modified accordingly and the appellant Insurance Company be exonerated from the liability foisted upon it.

5) In the present case, the issues framed by the Motor Accident Claims Tribunal reads as follows:-

> "1. Do the petitioners prove that they are the only legal representatives of the deceased Gopichand @ Arjun Kashinath Patil ?
>
> 2. Do they further prove that said Gopichand died in an accident which occurred on 28.11.95 at about 5.30 p.m. on Nagardeola-Pimpalgaon road near the field of Janglu Mahajan, which was caused due to rash and negligent driving by respondent No.1 of the tractor and trolley, bearing No.MFR 1103 and MWD-8839 respectively which is owned by respondent No.2 and insured with respondent No.3. ?
>
> 3. Is there any contributory negligence ? If

yes, its effect on the claim ?

4. To what amount of compensation the petitioners are entitled to, from whom and in what proportion ?

5. What order ?"

6) Significantly, there was no issue framed as regards the contention now raised by Mr.S.V.Kulkarni in appeal. Accordingly, the record of proceedings were scanned to see if such defence was ever raised by the appellant Insurance Company in its written statement before the Tribunal. On the perusal of the written statement, it is seen that no such defence or contention was ever raised by the appellant Insurance Company. For this reason, there was no occasion to frame any issue of this nature.

7) On perusal of written statement, it is clear that the only contention raised by the appellant Insurance Company was that the deceased was himself negligent and

therefore, claimants are not entitled to claim any compensation on account of demise of the deceased in the accident involving the insured vehicle. Infact the written statement admits the factum of the accident as also the factum that the vehicle being covered under an Insurance Policy issued by the appellant Insurance Company. This is precise defence, which is reflected in paragraph No.3 of the impugned award.

8) In so far as the issue of negligence of the deceased is concerned, there is absolutely no evidence in support of the same. Neither did the owner driver or the Insurance Company led any evidence in the matter to prove the aspect of negligence on the part of the deceased. There is evidence on record on the basis of which the Tribunal has rightly concluded that there was no negligence, which can be attributed to the deceased.

9) The ground now sought to be raised by

Mr.S.V.Kulkarni in the course of this appeal is not pure question of law. At the highest it is mixed question of law and facts. In the absence of any such contention or any such defence, the Tribunal cannot be faulted for not framing such an issue. Besides, at this stage, it will be quite harsh and unjust to permit the appellant Insurance Company to raise such issue. The impugned award was made in the year 2000. The deceased was a young person. The claim is made on behalf of the widow, children and the parents.

10) Accordingly, there is no case made out to interfere into the impugned Judgment and Award.

11) The Appeal is therefore, disposed of with the following order:-

ORDER

(I) The First Appeal No.145 of 2001 is dismissed.

There shall be however, no order as to costs.

(II) As the First Appeal is dismissed, the Civil Application pending therein is also disposed of.

(III) In case any amount is deposited in this Court or before the Tribunal, the respondents/claimants shall be entitled to withdraw the same together with accrued interest thereon, unconditionally.

(IV) Registry to transmit the record and proceedings as well as an authenticated copy of this order to the concerned Motor Accident Claims Tribunal at Jalgaon, within a period of four weeks from today.

(V) Upon receipt of such record and proceedings and also authenticated copy of this order, the Motor Accident Claims Tribunal to issue notice to the respondents/claimants so as to facilitate them with disbursal of the deposited amount with accrued interest. This is necessary since none of the respondents/claimants have appeared in this Court either themselves or through their

Advocate.

[M.S.SONAK, J.]