

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 401 OF 2005

M/s New India Assurance Co. Ltd.
having its Regd. & Head Office at 87
M.G. Road, New India Ass. Building
Mumbai
Branch at Jalna
Through its Divisional Office
at Adalat road,
Ajay Engg. Compound Aurangabad
through its Sr. Divisional Manager
and Duly constituted Attorney
Shri Shrikant Baliram Aney
aged 51 years

Appellant

Versus

- 1 Sharjabai w/o Devchand Sonone
age 35 years, occ. household work
- 2 Ms. Tarabai d/o Devchand Sonone
age 15, occ. minor
- 3 Ms. Ushabai d/o Devchand Sonone
aged 13 years, Minor
- 4 Ms. Balabai d/o Devchand Sonone
aged about 11 years, occ. minor
- 5 Rangnath s/o Devchand Sonone
aged 8 yrs. Minor

Nos. 2 to 5 are minors u/g of
respondent no. 1 being Natural mother

All r/o Jalku Tanda, Tq. Malegaon
Dist. Nasik.

- 6 Mahav Shankar Kshirsagar
Shivadi, Post Ugaon, Tq. Niphad
Dist. Nasik

Respondents

Mr. V.N. Upadhye, advocate for appellant.

CORAM : M.S.SONAK, J.

DATE : 19^h January, 2018.

ORAL JUDGMENT :

1 Heard Mr.Upadhye, learned Counsel for the appellant. Neither the respondents are present nor they are represented, though served.

2 The challenge in this appeal is to the judgment and award dated 10.01.2005, by which the Motor Accident Claims Tribunal ("MACT") has directed the appellant as well as owner and driver of the offending vehicle to jointly and severally pay compensation of Rs.1,50,000/-, including no fault liability, to the claimants, who are widow and minor children of deceased Devchand.

3 Mr.Upadhye, learned Counsel for the appellant submits that this is a clear case of fundamental breach of terms of the insurance policy and, therefore, the MACT erred in fastening liability on the Insurance Company. He points out that there is no dispute that the offending vehicle i.e. Truck, bearing Registration No.MTS-1875 was a Goods' vehicle. He submits that presence of Devchand and several other labourers in the vehicle, which is clearly borne out from the evidence on record, establishes that these persons were travelling in a Goods' vehicle. He submits that this is clearly impermissible and constitute fundamental breach of terms of the insurance policy. On this ground, Mr.Upadhye

submits that the Insurance Company was required to be exonerated.

4 Mr.Upadhye submits that death of Devchand is on account of he being crushed between the plank of the truck and bullock carts loaded in the truck. He submits that neither bullocks nor carts can be regarded as 'goods' so as to invoke provisions of Section 147 of the Motor Vehicles Act, 1988. He submits that there is absolutely no evidence to show that the bullocks or the carts were owned by deceased Devchand. In absence of all such material, the MACT clearly erred in holding even the Insurance Company liable for payment of compensation.

5 In order to appreciate submissions of Mr.Upadhye, the record was perused. From the record, it is clear that deceased Devchand was travelling in the offending vehicle i.e. Truck bearing Registration No.MTS-1875 along with some bullocks as well as carts, which were loaded in the truck. There is material on record to show that on account of rash and negligent driving of the driver of the truck, the motor accident took place and as a result of which Devchand came to be crushed between plank of the truck and bullock carts loaded in the truck and died on the spot. There is overwhelming evidence on record, both oral as well as documentary. Even medical evidence supports that Devchand died on account of cardio respiratory failure, secondary to shock due to vital organ damage with head injury. All this took place in the offending vehicle itself.

6 There is no dispute that this accident took place on 28.02.2002 i.e. after amendment to Section 147 of the Motor Vehicles Act, 1988. Section 147 of the Motor Vehicles Act *inter alia* provides that, in order to comply with the requirements of Chapter XI, a policy of insurance must be a policy which is issued by a person who is an authorised insurer; and insures the persons or classes of persons specified in the policy to the extent specified in sub-section (2) against any liability which may be incurred by him in respect of death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle. In this case, there is evidence on record that deceased Devchand was travelling in the offending vehicle along with his goods i.e. bullock carts. Even, for a moment, if it is held that there is no evidence that the goods were actually owned by Devchand, there is evidence on record that the goods were owned by the labour contractor and Devchand was the authorised representative, since, he was the one who was chosen to travel along with the goods. In matters of this nature, construction of both, pleadings as well as material on record, cannot be too pedantic to these matters which are to be decided on the touchstone of preponderance of probabilities. Even in case of any doubt, taking into consideration the object and intent of the legislation including, in particular, the object for which Section 147 of the Motor Vehicles Act, 1988, came to be amended, it has to be resolved in favour of the person for whose benefit the legislation was enacted or amended. The appellant-Insurance Company has, no doubt, raised usual plea of breach of terms of the policy, however, from the pleadings as also evidence on record, it is clear that such plea was not specifically raised. On the statement that,

persons were found to be travelling in goods vehicle and, therefore, this construe a fundamental breach of the Insurance policy, is neither here nor there. In any case, upon reasonable evaluation of the evidence on record, there is no necessity to deny the claimants benefit of provisions of Section 147 of the Motor Vehicles Act, 1988. Thus construed, there is no infirmity in the impugned judgment and award so as to warrant interference in this appeal.

7 The appeal is accordingly dismissed. There shall be no order as to costs.

8 The claimants have been permitted to withdraw the amount deposited by the appellant-Insurance Company subject to furnishing bank guarantee. It appears that the claimants could not furnish bank guarantee and, therefore, the amount continues to lie in the Registry of this Court. In the circumstances, Registry is directed to issue notice to the respondents-claimants informing them about the dismissal of the appeal; and further to permit the respondents-claimants to withdraw the amount, so deposited by the Insurance Company, together with interest that may have accrued thereon. In case, the Insurance Company has not deposited the entire amount, in terms of the impugned award, they are granted four weeks' time to deposit the same.

M.S.SONAK
JUDGE