

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

**FIRST APPEAL NO. 1388 OF 2016
WITH
CIVIL APPLICATION NO. 4598 OF 2016
WITH
CIVIL APPLICATION NO. 13601 OF 2017**

IFFCO Tokio General Insurance
Company Limited, through its
Legal Manager/Aurhtorized Signatory,
A-4, Suyash Complex, Baba Hardas Nagar,
Kalda Corner, Aurangabad, Tq.
& District Aurangabad .. **APPELLANT**

VERSUS

1. Sudamati W/o Kishanrao Kale,
Age : 50 Years, Occ. : Household,
R/o : Hadgaon (Bk) Tq. Pathri,
Dist. Parbhani.
2. Sunil S/o Umajirao Kakde,
Age: Major Occu. Business,
R/o Bimnagar, Parbhani,
Taluka & District Parbhani. ..**RESPONDENTS**

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Mr. S.G. Chapalgaonkar, Advocate for appellant.
Mr. S.V. Kulkarni, Advocate, Advocate for respondent No.1.
Mr. P.V. Balkhande, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.

DATE : 10th January, 2018.

JUDGMENT :-

1. Heard. Admit. With consent of both sides, the matter is taken up for final hearing on merit at the stage of admission.
2. The point of controversy involved in this appeal lies within short compass of section 147 of the Motor Vehicles Act, 1988 (for short "Act

of 1988") to ascertain the liability of Insurer-appellant to indemnify the owner of the vehicle in respect of death of passenger travelling in the goods carriage vehicle.

3. The deceased Mangesh s/o Kisanrao Kale, age 22 years, resident of Hadgaon, Tq. Pathri, District Parbhani a bachelor was eking livelihood by doing the private job as band master. He was playing a musical instrument in the group of musician of band party namely "Lokmanya Banjo Party". On the ill-fated day of accident I..e on 27-05-2010, the deceased Mangesh and his three/four members of Band party started proceeding towards Parbhani with their musical instruments of band for attending marriage ceremony. They were travelling in a goods carriage vehicle tempo bearing registration No. MH-22/N-1507. When the vehicle tempo reached near the hotel "Akshada Dhaba", the vehicle overturned and caused fatal head injury to deceased Mangesh. He was escorted to the Hospital at Nanded. The concerned doctor made endeavour to resuscitate the injured, but hapless deceased Mangesh breathed his last.

4. The information about the vehicular accident was passed on to police of Parbhani Police Station (Rural). It was alleged that the driver of the vehicle involved in the accident was very negligent and careless while driving the vehicle. He suddenly applied the breaks while vehicle was in a heavy speed. The Crime No. 32 of 2016 under section 279, 304(A) etc. of the Indian Penal Code came to be registered against driver. The Police drawn the spot panchnama, inquest panchnama and referred the dead body of deceased to autopsy. The medical experts

conducted post mortem and opined that the deceased Mangesh died due to head injury. The claimant-mother of the deceased Mangesh blamed the driver of the tempo vehicle for the untimely death of his bachelor son deceased Mangesh. It has been contended that the deceased Mangesh was the sole earning hand of the family. But, due to sudden demise of bread winner, there was loss to the claimant. In the result, she rushed to the Motor Accident Claims Tribunal, Parbhani (for short, 'Tribunal') and moved an application under Section 166 of the Act of 1988, for compensation.

5. In response to notices, both the respondents i.e. owner and insurer of the vehicle involved in the accident appeared before the Tribunal and resisted the claim by filing written statement (Exhibits- 17 and 13). The respondents denied the liability to compensate the loss. According to respondent No.1, there was no any fault on the part of driver of the vehicle, whereas, insurer refused to budge on the ground of breach of condition of policy. It has been alleged that the deceased Mangesh was travelling in the goods carriage vehicle as gratuitous passenger. Therefore, insurer has no liability to cover the risk under the policy to indemnify the owner.

6. The claimant mother of the deceased Mangesh adduced her evidence before the Tribunal at (Exhibit-23). She has also produced relevant documents of police record comprising F.I.R., spot panchnama, inquest panchnama, post mortem report, M.L.C.Report, policy cover note etc. In defiance, respondent No.2 - insurer examined its Manager Shri Shailesh Jaikishor Dodiya. He produced the copy of

the insurance policy on record. The Tribunal considered the entire evidence and partly allowed the claim petition. The Tribunal awarded compensation to the tune of Rs.4,92,000/- and fastened the liability jointly and severally on both the respondents i.e. insured and insurer to pay the compensation to the claimant mother of deceased Mangesh. Being dissatisfied with the joint and several liability imposed by the Tribunal for payment of compensation amount to indemnify the risk of insured, the appellant insurance company preferred the present appeal.

7. The learned counsel Shri. Chapalgaonkar for appellant-Insurance Company scathingly assailed that the impugned Judgment and Award of the Tribunal is arbitrary, illegal and not within the ambit of law. The Tribunal did not appreciate the factual aspect of the matter in its proper perspective. The Tribunal failed to consider that the deceased Mangesh was gratuitous and unauthorised passenger travelling in the goods vehicle. He was not owner of the goods carried in the vehicle. The learned counsel added that as per the F.I.R., vehicle tempo involved in the accident was hired by one Ansiram Kadam. He was the owner of goods laden in the vehicle. The deceased was traveling as gratuitous passenger. The registered carrying capacity of the vehicle was only 1+1 persons. But, at the time of accident, there were 7/8 persons travelling in the vehicle. Therefore, the act to carry passenger more than the capacity would be contrary to Rule 107 of the Motor Vehicle Rules, 1989 (for short, Rules of 1989). The learned counsel explained the circumstances in detail and submits that the liability to indemnify insured can not be fastened on the appellant insurance company. In support of arguments, he relied upon Judgment

of the Hon'ble Apex Court in a case – **National Insurance Co. Ltd. Versus Cholleti Bharatamma and others** reported in **[(2008) 1 SCC 42]** and **Manager, National Insurance Company Limited Versus Saju P. Paul and Another**, reported in **(2012) 2 Supreme Court Cases 41.**

8. At this juncture, it would profitable to reproduce the relevant portion of the provision contained in Section 147 of the Act of 1988 as amended by the Motor Vehicles (Amended) Act, 1994, as below.

"147. Requirements of policies and limits of liability-(1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which-

*(a) * * **

(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-

(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person including owner of the goods or his authorized representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of vehicle in a public place;

*(ii) * * *"*

9. Admittedly, the provision of Section 147 of the Act, 1988 came to be amended by the Amendment Act, 1994 and expression "including owner of the goods or his authorized representative carried in the vehicle" was added in it. The amended provision of Section 147 of the Act of 1988 was considered by the Hon'ble Apex Court in various cases

including the case of - ***New India Assurance Company Versus Satpal Singh, reported in (2000) 1 SCC 237.*** The correctness of the decision in Satpal Singh's case was reconsidered by the three Judges Bench of Hon'ble Apex Court in the case of ***New India Assurance Company Limited Versus Asha Rani and others, reported in (2003) 2 SCC 223.*** The Three Judges of Hon'ble Apex Court in para No. 9 of said Asha Rani's case held as under :-

"9. In Satpal case the Court assumed that the provisions of Section 95(1) of the Motor Vehicles Act, 1939 are identical with Section 147(1) of the Motor Vehicles act, 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the Insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amendment Act of 1994 is examined, particularly Section 46, by which the expression "injury to any person" in the original Act stood substituted by the expression "injury to any person including owner of the goods or his authorised representative carried in the vehicle", the conclusion is irresistible that prior to the aforesaid Amendment Act of 1994, even if the widest interpretation is given to the expression "to any person" it will not cover either the owner of the goods or his authorised

representative being carried in the vehicle. The objects and reasons of clause 46 also state that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes or liability under the insurance policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression "including owner of the goods or his authorised representative carried in the vehicle" which was added to the pre-existing expression "injury to any person" is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when that vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal Case therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner

of the goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of the goods or his representative dies or suffers any bodily injury.”

10. The aforesaid observations of the Hon'ble Apex Court was relied upon in Oriental Insurance Company Limited Versus Devireddy Konda Reddy, reported in (2003) 2 SCC 339, National Insurance Company Limited Versus Cholleti Bharatamma (2008) 1 SCC 423 as well as in the case of Manager, National Insurance Company Limited Versus Saju P. Paul and another (2013) 2 SCC 41.

11. It is evident from the settled rule of law that the purpose of enactment to make the insurance policy compulsory is to protect the interest of the successful claimant from being defeated by the owner of the vehicle. The provision of section 147 of the Act of 1988 as amended by the Motor Vehicles (Amendment) Act, 1994 includes only the owner of goods or his authorised representative carried in the vehicle, besides a third party to make liable the insurer to indemnify the insured.

12. In the instant case, it was not put into controversy that alleged accident was taken place on account of rash and negligent driving of the vehicle tempo involved in the accident. The owner of the vehicle did not agitate the findings of the Tribunal about rash and negligent driving of the vehicle before any appellate forum. The factum of negligent driving cannot be challenged by the appellant -Insurance Company. It is also an admitted fact that deceased Mangesh died

following fatal injuries caused to him in vehicular accident. The claimant is legal representative of deceased Mangesh being his mother. He was eking livelihood by doing a private job as Band Master. He was one of the members of Band party for playing musical instrument.

13. On the fateful day of incident, the vehicle tempo involved in accident was hired for carrying musical instruments of Band party for performance in the marriage ceremony at Parbhani. The FIR (Exhibit-26) adumbrates that deceased Mangesh and his associate members of the Band party hired the vehicle for carrying their musical instruments to play the same in marriage ceremony at Parbhani town. Obviously, the musical instruments of the Band party being delicate were difficult to handle and risky to carry in 'goods vehicle'. Therefore, deceased Mangesh and his associates to whom musical instruments were assigned for performance in the marriage ceremony at Parbhani, were carrying their instruments with due diligence and reasonable precaution. In such circumstances, it would be perceivable that deceased Mangesh being owner or authorised agent was carrying his musical instruments from Pathri town to Parbhani in the vehicle hired for the same.

14. Admittedly, deceased was travelling in the vehicle tempo involved in the accident accompanied with his musical instruments. Section 2 (13) of the Act of 1988 defines expression "goods". It contemplates that "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried

in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle. The "Personal effect" as defined in chambers 21st century, dictionary means a persons belonging especially than regularly carried about by them.

15. The aforesaid definition of term "goods" indicates that musical instruments carrying in the offending vehicle were the "goods" within the meaning of Section 2 (13) of the Act of 1988. The deceased Mangesh was travelling in the vehicle being owner or his authorised representative for carrying the goods i.e. musical instruments. The hire charges were paid to the owner of the vehicle. In view of Motor Vehicle Rules, it was not necessary that entire vehicle should be hired. Even if persons carried some goods in the vehicle and pays hire charges for transportation of the same goods, and, even if those 'goods' occupy only some portion of the vehicle still it would amount to hire of the vehicle within purview of law. Therefore, it would not necessary that the entire vehicle should be hired for carrying 'goods'.

16. In such peculiar circumstances, in the matter in hand, it would reasonable to visualize that the deceased was the owner or authorised representative carrying musical instruments of the Band Party for the purpose of playing in the marriage ceremony at Parbhani. The deceased and his associates hired the vehicle tempo for carrying their respective musical instruments safely to the destination. The deceased was travelling in the vehicle to take care his instruments, so that, there would not be any damage to it. These circumstances categorically demonstrate that deceased Mangesh was the owner or authorised

agent of the owner of musical instruments and he was travelling in the offending vehicle – tempo by paying hire for carrying the instruments in the vehicle. Unfortunately, the vehicle met with an accident resulting into his death. Therefore, there is no difficulty to conclude that appellant- Insurance Company has an liability to pay compensation.

17. In such backdrop, there is no impediment to arrive at the conclusion that by resorting to provisions of Section 147 of the Act, 1988 liability to make payment to the claimant would be fastened on the appellant- Insurance Company. There is no error or legal infirmity in the findings expressed by the learned Tribunal. No interference is warranted. In contrast, it be made confirmed and absolute.

18. In sequel, for the reasons discussed above, the appeal stands dismissed. No order as to costs. Pending civil applications do not survive following dismissal of appeal, and therefore, the same stand disposed of accordingly.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK.
