

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

**FIRST APPEAL NO. 907 OF 2005
WITH
CIVIL APPLICATION NO. 10620 OF 2005**

The New India Assurance Co. Ltd.,
Dhule Branch,
Through its Divisional Manager,
Adalat Road, Aurangabad

...Appellant
[Orig. Resp. No.3]

VERSUS

- 1] Mangal Babhuta Bhil,
age 38 years, occ. Agriculture
Labour, R/o Anvarde Khurd,
Tq. Chopada, Dist. Jalgaon,
- 2] Rajendra Yuvraj Patil,
age Adult, Occ. Driver,
- 3] Yuvraj Ramdas Patil,
age Adult,
occ. Tractor owner

Both r/o Budhgaon,
Tq. Chopda, Dist. Jalgaon
...Respondents

[No.1 Orig.Claimant]

...

Mr. Swapnil S.Dargad h/f Mr. S.G.Chapalgaonkar,
advocate for Appellant
Mr. S.N.Suryawanshi h/f Mr. N.B.Suryawanshi, Advocate
for Respondent no. 2
Respondent no.1 served.
Appeal against Respondent no.3 abated

...

**FIRST APPEAL NO. 909 OF 2005
WITH
CIVIL APPLICATION NO. 10622 OF 2005**

The New India Assurance Co. Ltd.,
Dhule Branch,
Through its Divisional Manager,
Adalat Road, Aurangabad

...Appellant
[Orig. Resp. No.3]

VERSUS

- 1] Ramchandra Yuvraj Patil,
age Adult, occ. Labour
- 2] Rajendra Yuvraj Patil,
age Adult, Occ. Driver,
- 3] Yuvraj Ramdas Patil,
age Adult,
occ. Tractor owner

All r/o Budhgaon,
Tq. Chopda, Dist. Jalgaon
...Respondents

[No.1 Orig.Claimant]

...

Mr. Swapnil S.Dargad h/f Mr. S.G.Chapalgaonkar,
advocate for Appellant
Mr. Mukul Kulkarni, Advocate for respondent no.1
Mr. S.N.Suryawanshi h/f Mr. N.B.Suryawanshi,
Advocate for Respondent no. 2
Appeal against Respondent no.3 abated

...

FIRST APPEAL NO. 910 OF 2005
WITH
CIVIL APPLICATION NO. 10623 OF 2005
WITH
CIVIL APPLICATION NO. 230 OF 2014

The New India Assurance Co. Ltd.,
Dhule Branch,
Through its Divisional Manager,
Adalat Road, Aurangabad

...Appellant
[Orig. Resp. No.3]

VERSUS

1] Samarot Nago Pare,
age 45 years, occ. Labourer
Labour, R/o Anvarde Khurd,
Tq. Chopada, Dist. Jalgaon,

2] Rajendra Yuvraj Patil,
age Adult, Occ. Driver,
for himself and deceased
Respondent no.3,

3] Yuvraj Ramdas Patil,
age Adult,
occ. Tractor owner,
since deceased through
legal representative i.e.
respondent no.2,

Both r/o Budhgaon,
Tq. Chopda, Dist. Jalgaon
...Respondents

[No.1 Orig.Claimant]

...

Mr. Swapnil S.Dargad h/f Mr. S.G.Chapalgaonkar,
advocate for Appellant

Mr. Deepak Choudhary, advocate for resp. no.1
(absent)

Mr. S.N.Suryawanshi h/f Mr. N.B.Suryawanshi,
Advocate for Respondent no. 2

Appeal against Respondent no.3 abated

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CORAM : SUNIL K.KOTWAL, J.

DATE OF RESERVING

THE JUDGMENT : 12.9.2018

DATE OF PRONOUNCEMENT

OF JUDGMENT : 19.9.2018

J U D G M E N T :

First Appeal No. 907 of 2005 is preferred against the judgment and award, passed by Motor Accident Claims Tribunal, Dhule, in M.A.C.P. No. 179 of 1999, awarding compensation of Rs. 33,000/- to the claimant, on account of sustaining permanent disability due to motor vehicular accident, dated 12.9.1998 of Tractor No. MH-19/C-8178 and Trailer No. MH-19/E-3167 (offending tractor and trolley).

First Appeal No. 909 of 2005 is preferred against the judgment and award, passed by Motor Accident Claims Tribunal, Dhule, in M.A.C.P. No. 1161 of 1998, awarding compensation of Rs. 40,000/- to the claimant, on account of sustaining permanent disability due to one and the same motor vehicular accident.

First Appeal No. 910 of 2005 is preferred against the judgment and award, passed by Motor Accident Claims Tribunal, Dhule, in M.A.C.P. No.

1165 of 1998, awarding compensation of Rs. 35,000/- to the claimant, on account of sustaining permanent disability due to one and the same motor vehicular accident.

Therefore these three appeals are disposed of by this common judgment.

2. Appellant is original respondent no.3 insurance company, with whom both the offending vehicles were insured on the date and time of the accident. Respondent no.1 is the original claimant and respondent nos. 2 and 3 are driver and owner of the offending tractor and trolley.

3. Heard Shri Swapnil S.Dargad, advocate holding for Shri S.G.Chapalgaonkar, learned counsel for the appellant, Shri S.N.Suryawanshi, advocate holding for Shri N.B.Suryawanshi, learned counsel for respondent no.2. Appeal against respondent no.3 owner of the offending vehicle is abated.

4. Learned counsel for the appellant assailed the judgment and award and submits that on

the date and time of the occurrence, the claimants were traveling by offending trolley as gratuitous passenger, and therefore, they are not covered by the policy of insurance. He placed reliance on the judgment in the case of "**National Insurance Company Ltd. Vs Rattani and others**" [2009 (3) **Mh.L.J. 754**].

5. Learned counsel for respondent no.2 supported the judgment, passed by the Tribunal, on the ground that in First Appeal No. 905 of 2005, the claimant was traveling by the tractor and trolley as owner of green mung, which were transported to market for sale and when he was returning with the remaining green mung, that time met with the above said accident, resulting into permanent disability to the claimant. Therefore, being owner of goods transported in the trolley, the claimants are covered by the policy of insurance under Section 147 of the Motor Vehicles Act, 1988. His next submission is that in First Appeal Nos. 905 and 910 of 2005, the claimants were

traveling by trolley as labours of the owner of tractor, who transported his own green mung i.e. agricultural produce to market for sale. Those labours are caretakers of goods of owner of Tractor. Therefore, they cannot be treated as gratuitous passenger.

6. He placed reliance on the judgment in the case of **"Amrit Pal Sood vs Smt. Kaushalya Devi Thapar"** [1998 (3) SCC 744] and the judgment in the case of **"Shivraj Vasant Bhagwat vs Smt. Shevanta Dattaram Indulkar and another"** [AIR 1997 BOMBAY 242].

7. After going through the pleadings of the parties, it becomes clear that only appellant insurance company has disputed the claim of claimants on two grounds. Its first ground is non-holding of valid driving license by the driver of the tractor and the second ground is that the claimants were traveling by the trolley after sale of green mung in the market. There was no

agriculture produce in the trolley at the time of accident, and therefore, the claimant cannot claim benefit as owner of goods transported by motor vehicle.

8. No doubt, in view of law settled by this Court in **National Insurance Company Ltd. Vs Rattani** (supra), the first information report of motor vehicle accident can be looked into to ascertain status of the claimant as owner of the goods or gratuitous passenger. In the case at hand, the insurance policy and certified copies of police papers are filed in M.A.C.Petition No. 179 of 1999 and with the consent of parties, those documents were read in other two accident claim petitions. After going through the FIR (Exh.28), it becomes clear that on the date of accident the claimants were traveling by the offending trolley with green mung for its sale to Shirpur market and after sale at the time of return journey the accident occurred on account of rash and negligent driving of the driver of the tractor. The spot panchanama and even FIR show that some agricultural produce like

grains were also scattered on the spot. Empty gunny bags of sold agricultural produce and unsold grains were found on the spot. Thus, otherwise also, the FIR and spot panchanama (Exhs. 28 and 29) support the claim of the claimants that two claimants were traveling by tractor as loading unloading labour of agricultural produce of tractor owner and claimant in MAC Petition No. 179 of 1999 was traveling as owner of agricultural produce mung and he was returning with some unsold grains which are noted in the FIR and panchanama.

9. Transport of agricultural produce upto market is definitely permitted under the farmer's policy of insurance. Record shows that the offending tractor and trolley were insured with appellant insurance company on the date of accident. No witness is examined by the insurance company to prove that the claimants were traveling by tractor and trolley as gratuitous passengers and not as loading unloading labour and owner of the goods. No evidence is placed on record to prove that driver of Tractor did not possess valid

driving license.

10. In the circumstances, the case of the claimants certainly falls within the ambit of Section 147 of the Motor Vehicles Act, 1988, which covers liability of any person including owner of goods or authorized representative of owner of goods carried in the vehicle, for any injury sustained by those persons arising out of use of the said vehicle in public place. Thus, I am fully satisfied that the appellant miserably failed to prove that the claimants were traveling by trolley as gratuitous passengers and thereby owner of the tractor committed breach of conditions of the policy.

11. In the case of **National Insurance Co. Ltd. Vs Rattani** (supra) and [Lex (Bombay) 207 1 14] are distinguishable on facts, because in the first case, the claimants were traveling in a truck as members of marriage party, and therefore, they were gratuitous passengers. In second case, the tractor was used in State of Maharashtra when permit was

not obtained for plying of that vehicle in the State of Maharashtra. Under those distinguishing facts there was breach of policy of insurance. I hold that the ratio of these authorities is not applicable in the case at hand. Regarding the authorities relied by respondent no.2, it is suffice to say that in those cases provisions of Motor Vehicles Act prior to Amendment 1994 were considered. Section 147 of Motor Vehicles Act is amended in the year 1994 providing protection to the owners of the goods or representative of owner of the goods transported in goods vehicle. Thus, those authorities are also distinguishable on facts and law.

12. After going through the judgment and award, passed by the Tribunal, it emerges that meager compensation is awarded to the claimants within range of Rs.33,000/- to Rs. 40,000/-, though the claimants sustained permanent disability. However, as claimants have no grievance regarding the compensation awarded by the Tribunal, I have no other alternative but to dismiss these three

appeals, preferred by the insurance company.

13. All these three appeals, being devoid of merits, deserve to be dismissed. First Appeal Nos. 907, 909 and 910 of 2005 are dismissed. All pending Civil Applications are disposed of accordingly. Parties to bear their respective costs.

[SUNIL K.KOTWAL, J.]

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