IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1491 OF 2015

Dhondubai w/o Hiraman Chavan
Age : 40 years, occu.: labourer
R/o Dapka (G), Taluka Mukhed,
District Nanded. **Appellant**.

Versus

1. Hanmantappa Bandappa Gandigude
Since deceased, through his LRs.

1-A. Saroswatibai w/o Hanmantappa Gandigude
Age : major, occu.: household.,

1-B. Mahadeo s/o Hanmantappa Gandigude
Age : major, occu.: agri.,

1-C. Bandeppa s/o Hanmantappa Gandigude
Age : major, occu.: agri.,

2. United India Insurance Co. Ltd.
Branch at Degloor, Dist. Nanded.

3. United India Insurance Co. Ltd.
Through its Branch Manager, Nanded.

4. Bhanudas Ambaji Shankar
Age : major, occu.: business.
R/o Gulgalli, Latur.

5. New India Insurance Co. Ltd.,
Through its Branch Manager,
Nanded (**deleted)**.

6. New India Insurance Co. Ltd.,
Through its Branch Manager,
Nanded (**deleted**). **Respondents**.

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Mr. Ram S.Shinde, Advocate for the appellant.
Mr. S.G. Chapalgaonkar, Advocate for respondent No.3.
Mr. A.P. Bhandari, Advocate for respondent No.4.

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FIRST APPEAL NO. 1541 OF 2015

1. United India Insurance Co. Ltd.
   Branch at Degloor, Dist. Nanded.

2. United India Insurance Co. Ltd.,
   Through its Branch Manager,
   Nanded.

   Through its Divisional Manager/
   Authorised Signatory, Seven Hills,
   Jalna Road, Aurangabad. **Appellant**.

Versus

1. Dhondubai w/o Hiraman Chavan
   Age : 31 years, occu.: labourer,
   R/o Dapka (G), Taluka Mukhed,
   District Nanded.

2. Hanmantappa Bandappa Gandigude
   Age : major, occu: business
   Since deceased, through his LRs.

2-A. Saroswatibai w/o Hanmantappa Gandigude
   Age : major, occu.: household.,

2-B. Mahadeo s/o Hanmantappa Gandigude
   Age : major, occu.: agri.,

2-C. Bandeppa s/o Hanmantappa Gandigude
   Age : major, occu.: agri.,

3. Bhanudas Ambaji Shankar
   Age : major, occu.: business.
   R/o Gulgalli, Latur.

4. New India Insurance Co. Ltd.,
   Through its Branch Manager,
   Nanded (**deleted)**.

5. New India Insurance Co. Ltd.,
   Through its Branch Manager,
   Nanded (**deleted**). **Respondents**.

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Mr. S.G. Chapalgaonkar, Advocate for the appellant.
Mr. Ram S. Shinde, Advocate for respondent No.1.
Mr. A.P. Bhandari, Advocate for respondent No.3.

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CORAM : SUNIL K.KOTWAL,J.

Judgment reserved on : 10th September 2018.
Judgment pronounced on : 21st September 2018.

JUDGMENT : (PER SUNIL K. KOTWAL,J.)

1. First Appeal No. 1491 of 2015 is filed by the original claimant and First Appeal No.1541 of 2015 is filed by United India Insurance Company (original respondent No.2 and 3) against one and the same judgment and award passed by Motor Accident Claims Tribunal, Mukhed in Motor Accident Claim Petition No.795/2004.

2. Respondents Nos. 1(a) to (c) are the registered owner of tractor bearing registration No. MH-26-C-1982 and United India Insurance Company was the insurer of this tractor on the date and time of the accident. Respondent No.4 Bhanudas Ambaji Shankar was the registered owner of Trolley bearing registration No. MIB-6366 (new registration No. MH-24-E-7500), which is also involved in the same accident, which took place on 05.11.1999 near Dhadakmal name plate of Halani to Mukramabad road at about 1.00 p.m.

3. These both appeals are disposed of by this common judgment.

4. Original claimant has challenged the judgment and award on the ground that the compensation awarded by the Tribunal is inadequate and needs to be enhanced to the extent of Rs.10,00,000/- (Rupees Ten Lakh) with interest at the rate of 9 % per annum from the date of filing of petition, instead the interest awarded by the Tribunal from 27.11.2014. The Insurance Company has challenged the judgment and award on the ground of breach of condition of policy, as the claimant was travelling by the offending trailer drawn by the offending tractor, as gratuitous passenger.

5. The facts leading to institution of the Claim Petition are that on 05.11.1999 the claimant and other persons were travelling by offending tractor and trailer towards Mukramabad and on the way at about 1.00 p.m. on account of rash and negligent driving by the tractor driver, accident occurred and in that accident claimant sustained serious injury to her left leg resulting into amputation of her left leg above the knee joint.

6. Heard strenuous arguments submitted by Mr. Ram Shinde, learned Counsel for the original claimant Dhondubai, Mr. S.G. Chapalgaonkar, learned Counsel for United India Insurance Company and Mr. Bhandari, learned Counsel for original respondent No.4 Bhanudas Ambaji Shankar, who was the owner of the trailer.

7. Learned Counsel for the original claimant submits that at the time of occurrence of the accident, the claimant was travelling

by offending tractor and trailer as loading and unloading labourer, and therefore, the claimant does not fall within the category of gratuitous passenger. He submits that premium of Rs. 15/- is paid in the policy of insurance of offending trailer for the transport of loading and unloading labours.

8. The next contention of the learned Counsel for original claimant is that in the written statement the Insurance Company has not taken a plea that the claimant was travelling by offending trailer as gratuitous passenger. He submits that only on the ground of stray admission given by claimant Dhondubai (PW-1) In her cross-examination that on the date of accident she was not working as a labourer, inference cannot be drawn that the claimant was travelling as a gratuitous passenger. Therefore, Insurance Company is equally liable to pay compensation alongwith owners of the offending tractor and trailer.

9. His next submission is that while awarding compensation, learned Tribunal did not consider the notional income of woman labourer and loss of future income due to amputation of her left leg from above the knee joint. He also submits that the learned Tribunal ought to have awarded interest at the rate of Rs. 9% per annum from the date of filing of petition. He has drawn my attention towards the evidence of Medical Officer Dr. Sudam Munishwar (PW-3) who has proved permanent disability certificate

(Exh.107). Learned Counsel placed reliance on the judgments in the cases of **"Raj Kumar Vs. Ajay Kumar and another" [2011 (1) ALL MR 402 (S.C.)], " V. Mekala Vs. M. Malathi and another" (2014 AIR SCW 2973), "Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co. Ltd." [2014 (4) Mh.L.J. 538], "Asari Pothalingam Vs. Lambadi Mamji" (2012 ACJ 2117), "Rekha Datta Vs. Ram Avatar Lohia" (2006 ACJ 2679), "Union of India Vs. Rina Devi" (2018 SCC Online SC 507), "United India Insurance Co. Ltd. Vs Vimal Narayanrao Nandanwar and others" [2008 (1) Mh.L.J. 626], "United India Insurance Co. Ltd. Bhandara Vs. Suryakantabai wd/o Shalikram Patle" [2008 (4) Mh.L.J. 351], "Arun Kumar Agrawal Vs. National Insurance Co. Ltd." [(2010) 9 SCC 218], Urviben Chiragbhai Sheth Vs. Vijaybhai Shambhubhai Joranputra and others" [(2011) 12 SCC 582]** and **"Lakhmi Chand Vs. Reliance General Insurance" [(2016) 3 SCC 100]**.

10. Learned Counsel for the Insurance Company, in reply, submits that under Section 2 (44) of the Motor Vehicles Act, 1988, "tractor" means a motor vehicle which is not itself constructed to carry any load, but excludes a road-roller. Under Section 2 (46) of the said Act, "trailer" means any vehicle, other than a semi-trailer and a side car, drawn or intended to be drawn by a motor vehicle. He submits that the tractor cannot be used for carrying any person

other than the driver. He points out that as per the recitals of the F.I.R. (Exh.92), which is part of record, about 30 villagers were travelling by trolley attached to the offending tractor, as gratuitous passengers and the terms and conditions of insurance policy of the tractor do not permit transport of any gratuitous passenger by the tractor.

11. He points out that the offending tractor was used only for agricultural purpose and not for transport of the passengers. The sum and substance of his argument is that the claimant was travelling by offending trailer only as gratuitous passenger, and therefore, she is not covered under the terms and conditions of the policy of insurance.

12. He points out that in the cross-examination the claimant Dhondubai (PW-1) has admitted that on the date of accident she was not working as a labourer. He also points out that as per the pleading of claimant, her monthly income was Rs. 2,000/-, and therefore, now the claimant cannot claim compensation at enhanced rate assuming that her notional income is Rs. 6,000/- per month.

13. Learned Counsel for the Insurance Company has drawn my attention to Paras 3 and 5 of the Written Statement submitted by Insurance Company regarding their specific defence. Learned Counsel has drawn my attention towards evidence of witness Sadashiv Asole (DW-1), who is examined by the Insurance

Company to prove terms and conditions of insurance policy. Learned Counsel for the Insurance Company placed reliance on the judgments in the cases of **“National Insurance Co. Ltd. Vs. Jugal Kishore and others” (AIR 1988 SC 719), “Shivaraj Vs. Rajendra” (2018 SCC OnlineSC 1346), “National Insurance Co. Ltd. VS Sushila Niwarti Bande and others” [2009 (5) All. M.R. 878], “New India Assurance Co. Ltd. Vs. Mirabai Parshuram Chaudhari and others” [2013 (3) Bom. C.R. 201], “National Insurance Co. Ltd. Vs Rattani and others” [2009 (3) Mh.L.J. 754], “United India Insurance Co. Ltd. VS Laila Ayyub Sayyad” [I (2017) ACC 33 (Bom.).], “Oriental Insurance Co.Ltd. Vs Brij Mohan and others” [AIR 2007 SC 1971 (I)], “United India Insurance Co. Ltd. Vs Sarjedrao and others” (AIR 2008 SC 460)** and **“New India Assurance Company Ltd. Vs. Diwakar Daulatrao Rohankar and others” [2005 (4) Mh.L.J. 773]**.

14. Learned Counsel for original respondent No.4 / trailer owner submits that the he was not served before the Tribunal as the notice was issued on incorrect address. He has drawn my attention towards registration particulars ('X') which shows that on 13.07.1999 the offending trailer was converted into non-transport vehicle and it was transferred to owner of the tractor namely Hanmantappa Bandappa Gandigude (Respondent No.1).

15. The objection raised by learned Counsel for the appellant regarding lack of pleadings by respondent Insurance Company regarding breach of condition of policy of insurance, is obviously not tenable for the reason that para 9 (i) & (ii) of the Written Statement clearly indicates that the Insurance Company has taken specific defence that owner of the tractor has committed breach of condition of policy by allowing gratuitous passenger to travel by tractor and trolley, which are the goods carriage.

16. In the case at hand, the date and time of occurrence of accident is not at all disputed by both the parties. On the other hand, in para Nos.5 and 6 of the Written Statement, Insurance Company has admitted F.I.R., spot panchnama and registration of Crime No.162/1999 against driver of the tractor. The only objection raised by Insurance Company is that the policy of insurance of trailer filed by the claimant does not show registration number of the trailer, and therefore, the claimant cannot prove that on the date and time of the accident, the trailer was insured with respondent Insurance Company.

17. Even after going through the evidence of claimant Dhondubai Chavan (PW-1), it emerges that in her examination-in-chief though she has proved R.C. Book of offending tractor (Exh.100), insurance cover note of tractor (Exh.101) and R.C. Book of trailer (Exh.102), she has not whispered a word regarding

insurance policy of trailer involved in this accident.

18. R.C. Book of tractor (Exh.100) shows that respondent No.1 is the registered owner of that tractor and including driver the sitting capacity of that vehicle is 'only one'. Therefore, obviously no passenger can travel by sitting on the tractor. The motor vehicle cover note issued by United Insurance Company shows that the offending tractor was insured with respondent No.2 / Insurance Company from 28.03.1999 to 27.03.2000. The accident occurred on 05.11.1999. Thus, obviously on the date of accident the offending tractor was insured with respondent No.2 Insurance Company. This cover note does not indicate that any passenger or loading unloading labourer is allowed to travel by the insured tractor.

19. Even R.C. Book of trailer (Exh.102) indicates that though respondent No.4 was original owner of the offending trailer, subsequently it was transferred in the name of respondent No.1 Hanmantappa Bandappa Gandigude on 20.08.1999. Thus, on the date of occurrence of accident, respondent No.1 was the registered owner of the offending trailer. This R.C. Book shows that the sitting capacity of this trailer was 'NIL'. Thus, nobody was permitted to travel by this trailer.

20. The claimant has filed schedule of insurance policy (Exh.118) which is admitted by respondent Insurance Company. However, this schedule of insurance does not indicate registration

number of the tractor and even chassis number of the tractor or trailer. Thus, by no stretch of imagination this schedule of policy of insurance can be treated as insurance policy of the trailer. Even this schedule cannot be connected with the offending tractor for absence of registration number of offending tractor on this schedule (Exh.118). IN the circumstances, the factual aspects are absolutely clear that the trailer involved in the accident was not insured with any Insurance Company and even as per policy of insurance (Exh.101) of the offending tractor, except driver, no person was allowed to travel by that tractor.

21. Though claimant Dhondubai Chavan (PW-1) deposes on oath that on the date of accident she boarded in the offending trailer as unloading labourer and though she claims that due to rash and negligent driving by driver of the offending tractor she met with an accident which resulted into amputation of her left leg from above the knee joint, for lack of insurance of trailer, by which she was travelling at the time of accident, respondent No.2 Insurance Company cannot be held liable to indemnify respondent No.1 – owner of offending tractor.

22. Learned Counsel for the claimant placed reliance on schedule of insurance (Exh.118) which shows that premium of Rs.15/- was paid by owner of one tractor for persons employed in connection with loading / unloading of motor vehicle. As observed

above, no registration number of the offending tractor is mentioned on this schedule, and therefore, it cannot be said that it pertains to insurance of offending tractor or trailer. In the circumstances, in absence of any iota of evidence on record regarding insurance of offending trailer and payment of additional premium by respondent No.1 to carry labourers by offending trailer, by no stretch of imagination it can be held that respondent No.2/3 - Insurance Company is liable to pay any compensation for the injuries sustained by claimant.

23. Learned Counsel for the claimant heavily relied on the judgment in the case of **Asari Pothalingam Vs. Lambadi Mamji** (supra) (Andhra Pradesh). I have gone through this judgment carefully. However, with great respect I differ from the opinion expressed by Their Lordship of Andhra Pradesh High Court that the trailer attached to the motor vehicle needs no separate insurance. On the other hand, in the case at hand, the offending trailer is separately registered as non-transport motor vehicle. Even under Section 2 (46) of the Motor Vehicles Act, 'trailer' is defined, but not as a part of the tractor. Therefore, under Section 146 read with Section 147 of the Motor Vehicles Act, 1988, such trailer being motor vehicle requires policy of insurance before running it in a public place.

24. Learned Counsel for the claimant placed reliance on "**Lakhmi Chand Vs Reliance General Insurance"** (supra), wherein it is held that burden lies on Insurance Company to prove fundamental breach of policy of insurance to avoid its liability.

25. In the case at hand, by examining Administrative Officer Sadashiv Asole (DW-1), respondent No.2 – Insurance Company has proved policy of insurance of offending tractor (Exh.101) and made it clear that the Insurance Company has not taken risk under that policy of any labourer for loading and unloading goods. Rspondent No.2 has discharged its initial burden. From the evidence of claimant Dhondubai Chavan (PW-1) and her witness Jijabai (PW-2), it emerges that on the date of occurrence of the accident they were travelling by trailer after loading plack (खडी) in the trailer. However, as the trailer was not insured with respondent No.2 – Insurance Company, the Insurance Company cannot be held responsible for the injuries sustained by claimant while travelling by the offending trailer. Otherwise also, the tractor is to be used for agricultural operations and not for transport of building material like plack (खडी). The policy of insurance relied by claimant indicates that it is a "farmer's policy". Therefore, it covers risk of the accident occurred during agricultural operations and not for carrying or transport of building material like plack (खडी).

26. My attention was drawn by learned Counsel for respondent No. 2 – Insurance Company to the case of **“Oriental Insurance Co. Vs. Brij Mohan and others”** (supra) wherein it is held that when the tractor was insured only for carrying out agricultural worker, which would not include digging of earth and taking it in trolley to brick kiln, the labour travelling by trolley attached to the tractor if sustains injury, the Insurance Company is not liable to pay compensation. Similar view was expressed by Supreme Court in the case of **United India Insurance Company Vs. Sarjerao** (Supra) and “**Oriental Insurance Company Ltd. Vs. Brij Mohan and Ors”. (2007 (7) SCALE 753)**.

27. Thus, even assuming that on the date and time of the accident the claimant and other persons were travelling by trailer as labours, even then respondent No.2- Insurance Company is not liable to pay any compensation for the accidental injuries sustained by the claimant as the trailer was used for transport of building material and not any agricultural produce. In the circumstances, I have no hesitation to hold that respondent No. 2 - Insurance Company deserves to be exonerated from the liability to pay compensation to the claimant.

28. Now, turning to the quantum of compensation to be payable to the claimant. According to the claimant Dhondubai Chavan (PW-1), till the date of accident she used to work as a

labourer and she used to earn Rs. 2400/- per month. In addition to this she was also working in her home as housewife. This witness has made it clear that due to injuries sustained in the above-said accident, her left leg was amputated from above her knee joint, and therefore, after the accident she is unable to work as a labourer.

29. No doubt, in her cross-examination she has admitted that at the time of accident she used to do household work. She has also admitted that she was not working. However, on the basis of this stray admission, it cannot be held that the claimant did not work as a labourer and she did not earn Rs. 2400/- per month as a labourer. In her subsequent cross-examination she has specifically denied that on the date of accident she was not working as a labourer. Even assuming that she is a housewife, then also her notional monthly income would be not less than Rs.3,000/-. Thus, contention of claimant is acceptable that on account of accidental injuries and amputation of her left leg, she sustained loss of Rs.2400/- per month.

30. Dr. Sudam Munishwar (PW-3), who was the Member of Disability Board in SGGSM Hospital, Nanded, has categorically deposed that on 05.11.1999 the claimant Dhondubai Chavan was brought to SGGSM Hospital, Nanded and she had fracture of femur bone. According to this witness, left leg of claimant Dhondubai was amputated above the knee joint and she was admitted in the

hospital up to 19.12.1999. Thereafter he examined her on 24.11.2001 and issued permanent disability certificate (Exh.107). This witness has made it clear that the claimant sustained 70% body-wise disability and she has become static and she has lost her mobility. Independence of claimant is lost and she has become dependent on others. This Medical Officer has made it clear that the claimant requires assistant to do critical work and she had received severe mental trauma which hampers her progress and social activities. This witness has made it clear that on account of above disability, the claimant is not able to perform household duties and for use of Jaipur Foot she has to spend Rs. 30,000/- and this artificial foot is to be replaced after span of 2/3 years. Despite searching cross-examination by learned Counsel for Insurance Company, this witness stood constant regarding permanent disability of the claimant. The testimony of this medical witness is also corroborated by permanent disability certificate (Exh.107).

31. In view of this evidence on record, it has become clear that the claimant has proved that due to accidental injuries sustained by claimant in above-said accident, the claimant has sustained 70% permanent disability on account of amputation of her left leg above the knee joint. As the left leg of claimant is amputated from above the knee joint, she has become totally handicapped and she cannot move without assistance of others. She cannot even

perform her duties as housewife as well as she cannot work as a labourer. In the circumstances, I have no hesitation to hold that the claimant has sustained 100% loss of future income, at the rate of Rs.2,400/- per month. Considering the age of claimant as 22 years and she being self employed, 40 % income i.e. Rs. 960/- is to be added in the above-said monthly income of the deceased under the head of loss of future prospects. Thus, her monthly loss of income is calculated as Rs. 3,360/- (2,400 + 960). Considering the monthly loss of income of claimant as Rs.3,360/-, her annual loss of income is Rs.40,320/- (3360 x 12).

32. From the medical case papers of claimant (Exh.98), it emerges that the age of claimant, on the date of accident, was 22 years. Thus, to assess future loss of income of the claimant, multiplier of “18” will be applicable. On applying multiplier of “18”, future loss of income of the claimant due to permanent disability is assessed as Rs.7,25,760/- (40,320 x 18).

33. The claimant was admitted in the hospital from 05.11.1999 till 19.12.1999. Therefore, for 44 days during her period of hospitalization she has also sustained actual loss of income. It can be calculated as Rs. 3,520/-. Thus, under the head of actual loss of income the petitioner is also entitled to compensation of Rs.3,520/-.

34. No bills of medicines are filed and proved by the claimant. Probably she was treated in Government Hospital. Therefore,no compensation can be awarded under the head of medical expenses. However, during the hospitalization period of 44 days somebody must have attended the claimant and some charges must have incurred towards transportation of claimant to hospital at Nanded. Therefore, under the head of attendance and conveyance charges, compensation of Rs. 50,000/- needs to be awarded. Under the head of special diet and nutrition compensation of Rs. 20,000/- would be appropriate. As proved by Medical Officer Dr. Munishwar (PW-3), the claimant has become static and she cannot do any work without assistance of third person. Thus, under the head of loss of amenities in future life, compensation of Rs.1,00,000/- needs to be awarded. The same compensation is to be awarded under the head of pain and suffering. Thus, the total compensation to be awarded to the claimant is as below :-

1)	Loss of future income	Rs. 7,25,760/-
2)	Loss of actual income	Rs. 3,520/-
3)	Attendance and conveyance charges	Rs. 50,000/-
4)	Special diet and nutrition	Rs. 20,000/-
5)	Loss of amenities in future life	Rs. 1,00,000/-
6)	Pain and suffering	Rs. 1,00,000/-
	Total :-	**Rs. 9,99,280/-**

35. The claimant is entitled to total compensation of Rs.9,99,280/- (Rupees Nine Lakh Ninety Nine Thousand Two Hundred and Eighty only) alongwith simple interest at the rate of Rs.9% per annum from the date of filing of petition before the Tribunal till the date of payment of compensation amount, by original respondent No.1 – owner of the offending tractor. The delay in decision of claim petition is not caused due to negligence of claimant. But it is on account of transfer of case from one Court to another without prior intimation to the claimant. Thus, the order of Tribunal awarding interest at the rate of 6% p.a. from 27.11.2014 is incorrect.

36. Learned Counsel for the appellant requested for pay and recover order against the Insurance Company. However, in the case of **"Traders Pvt. Ltd. and another Vs. Sunanda and others" (2010 ACJ 669)**, the Division Bench of this Court held that the orders passed by the Supreme Court against the Insurance Company to pay compensation to the victim and recover it from the owner of the vehicle, are passed in exercise of its jurisdiction under Article 142 of Constitution of India read with Article 136 thereof for doing complete justice to the parties. Such powers do not vest in the High Court. It is, therefore, not possible for the High Court to pass the similar orders.

37. Therefore, no order can be passed against the Insurance Company to pay compensation amount to the claimant and later on recover it from the owner of the vehicle. It is absolute responsibility of owner of the offending vehicle to pay the compensation amount to the claimant.

38. In the result, First Appeal No.1491 of 2015 and First Appeal No. 1541 of 2015 are partly allowed. United India Insurance Company is exonerated from the liability to indemnify original respondent No.1 – tractor owner. Respondent No.1 – tractor owner do pay compensation of Rs.9,99,280/- (Rupees Nine Lakh Ninety Nine Thousand Two Hundred and Eighty only) alongwith simple interest at the rate of Rs.9% per annum from the date of filing of petition before the Tribunal till the date of payment of entire compensation amount to the claimant. Deficit Court-fees, if any, be recovered from the claimant.

39. Parties to bear their respective costs of appeals. The Award passed by the Tribunal, Mukhed be modified accordingly.

(SUNIL K. KOTWAL)
JUDGE

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