**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**
**FIRST APPEAL NO. 1121 OF 2019**

1. Ulhas s/o Sampatrao Deshmukh,
   Age 50 years, Occ. Agriculture.

2. Asha w/o Ulhas Deshmukh,
   Age 45 years, Occ. Household.

   Both r/o. Jawale-Kadlag,
   Tq. Sangamner, Dist. Ahmednagar. … **Appellants**
   **(Orig. Claimants)**

**Versus.**

1. Kalam Amin Inamdar,
   Age 38 years, Occ. Tempo owner,
   R/o. Kokangaon, Tq. Sangamner,
   District Ahmednagar.

2. The Branch Manager,
   New India Insurance Company Ltd.,
   Near Bank of Baroda, Sangamner,
   Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
   **(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1120 OF 2019**

1. Noorjaha w/o Raju Tamboli,
   Age 38 years, Occ. Household.

2. Samrin d/o Raju Tamboli,
   Age 20 years, Occ. Education.

3. Saniya d/o Raju Tamboli,
   Age 17 years, Occ. Education.

4. Suhana d/o Raju Tamboli,
   Age 15 years, Occ. Education.

5. Juned d/o Raju Tamboli, Age 13 years,
   Occ. Education. Appellants No. 3 to 5
   are Minor, u/g Appellant No. 1.
6. Rahimat Maheboob Tamboli, **...Appellants**
   Age 67 years, Occ. Nil. All R/o. (Orig. Claimants)
   Jawale-Kadlag, Tq. Sangamner,
   Dist. Ahmednagar.

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1082 OF 2019**

1. Shaheen Jalalouddin Tamboli,
Age 24 years, Occ. Household.

2. Tamanna Jalalouddin Tamboli
Age 06 years, Occ. Nil.
Under the guardianship of her
mother the appellant No. 1.

3. Babubhai s/o Mahamad Tamboli.
Age 66 years, Occ. Agriculture.
All r/o. Jawale-Kadlag, Tq. Sangamner,
District Ahmednagar. … **Appellants**
**(Orig. Claimants)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**

**WITH**
**FIRST APPEAL NO. 1170 OF 2018.**

Ulhas s/o Sampat Deshmukh,
Age 55 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**

**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1171 OF 2018.**

Sharad s/o Sampat Deshmukh,
Age 47 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1172 OF 2018.**

Kailas s/o Govind Mohite,
Age 48 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1173 OF 2018.**

Meerabaksh s/o Babubhai Tamboli,
Age 33 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents).**

**WITH**
**FIRST APPEAL NO. 1174 OF 2018.**

Dharma s/o Khema Wayal,
Age 38 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,

District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1175 OF 2018.**

Amol s/o Nana Tupsundar,
Age 23 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,
New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. … **Respondents.**
**(Orig. Opponents)**

**WITH**
**FIRST APPEAL NO. 1176 OF 2018.**

Nana s/o Gangadhar Tupsundar,
Age 47 years, Occ. Labour,
R/o. Jawale-Kadlag, Tq. Sangamner,
Dist. Ahmednagar. … **Appellant**
**(Orig. Claimant)**

**Versus.**

1. Kalam Amin Inamdar,
Age 38 years, Occ. Tempo owner,
R/o. Kokangaon, Tq. Sangamner,
District Ahmednagar.

2. The Branch Manager,

New India Insurance Company Ltd.,
Near Bank of Baroda, Sangamner,
Tq. Sangamner, Dist. Ahmednagar. ... **Respondents.**
**(Orig. Opponents)**

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| **CORAM** | : | **MANGESH S. PATIL, J.** |
| **RESERVED ON** | : | **27/11/2019.** |
| **PRONOUNCED ON** | : | **11/12/2019.** |

**JUDGMENT :**

By way of these appeals the original claimants who had filed separate petitions under Section 166 of the Motor Vehicles Act are impugning the judgments and orders passed by the Tribunal only to the extent it directs the owner of the vehicle alone to pay the compensation to them and exonerating the Insurance Company.

2. Though all these petitions have been decided separately, except in one of these matters i.e. First Appeal No. 1121/2019 the rest of the petitions have been decided by the Tribunal on the same day and for the same reasons the Insurance Company has been exonerated. In First Appeal No. 1121/2019 the Tribunal has decided the petition on some other day, but more or less, for the same reasons it has exonerated the Insurance Company.

3. At the request of both the sides the matters are heard finally at the stage of admission. A notice for final disposal has been duly

served to the owner of the vehicle, who has been asked to pay the compensation but he has not appeared.

4. The sum and substance of the reasoning assigned by the Tribunal exonerating the Insurance Company and fixing the responsibility to pay the compensation on the owner of the vehicle is to the effect that the deceased and the other petitioners were travelling in a tempo which was a goods carriage. There was no evidence to show that they had hired the tempo or that they were the owners of the goods being carried in the tempo or that they were the representatives or labourers of the owner of the goods being transported. Therefore the risk to such passengers being carried in the goods vehicle was not covered by the policy of insurance and was not mandatorily coverable under Section 147 (1)(b)(i) of the Motor Vehicles Act. Except in the matter of First Appeal No. 1121/2019 the Tribunal placed reliance on the decision of the Supreme Court in case of ***New India Assurance Company Ltd. V/s. Asha Rani; AIR 2003 Supreme Court 607, National Insurance Company Ltd. Vs. Bommithi Subbhayamma and Ors.; 2005 ACJ 721*** and ***National Insurance Company Ltd. Vs. Rattani and Others; 2009 ACJ 925*** and has held that since the deceased and the petitioners were travelling in the goods vehicle as gratuitous passengers the risk to their life and limb was not covered by the insurance policy and no direction to the Insurance Company to first pay the compensation and then to recover it from the

owner/insured could be passed.

5. The learned advocate for the appellants vehemently submitted that the Tribunal has grossly erred in appreciating the evidence while refuting the stand of the claimants that they were travelling in the tempo with their goods. The learned advocate then placed reliance on following decisions to submit that the respondent Insurance Company should have been primarily held responsible to pay the compensation and may be it could have been made entitled to recover it from the respondent-owner.

(1) **Manuara Khatun Vs. Rajesh Kr. Singh; 2017 ACJ 1031.**

**(2) HDFC ERGO General Insurance Co. Ltd. Vs. Rangrao Naval Patil & others; 2017 ACJ 366.**

**(3) Oriental Insurance Co. Ltd. Vs. Gangavarapur Padmawati & others; 1996 ACJ 45.**

**(4) Bhagwan Kundlik Mandhe & oth. Vs. Jijabai Maroti Dhotre; in First Appeal No. 625 of 2007, decided on 14.02.2019 (Nagpur Bench).**

**(5) Reliance General Insurance Co.Ltd. Vs. Pralhad Shamrao Murkute; in First Appeal No. 874 of 2015, decided on 22.02.2019 (Aurangabad Bench).**

**(6) New India Assurance Co. Ltd. Vs. Sharjabai Devchand Sonane & oth; in First Appeal No. 401 of 2005, decided on 19.01.2018 (Aurangabad Bench.)**

6. Per contra, the learned advocate for the respondent/Insurance Company supported the reasoning given by the Tribunal while exonerating it.

7. As is mentioned above, the respondent-owner of the vehicle has not appeared in spite of service of notice for final disposal and therefore he could not be heard.

8. I have carefully gone through the entire records and proceedings of all these petitions. It is evident from the evidence that the vehicle in question is a goods carrying vehicle. Even the insurance policy clearly shows that it is a goods carrying vehicle. The policy did cover liability to persons employed for operation and/or maintenance and/or loading and/or unloading as also it covered risk to paid driver, conductor, cleaner employed for its operation. However as has been correctly found by the Tribunal in all these matters, there was absolutely no evidence to come to a conclusion that the deceased and the injured claimants were travelling in the tempo in the capacity of the owners of the goods. True it is that fertilizers and medicines (sic.pesticides) were being carried in the tempo. However, it is also a matter of evidence and record that as many as 18 passengers were travelling in the tempo at the relevant time. The appellants herein were some of those and even the deceased was amongst them.

9. It has come in the evidence that all these persons had arrived at Sangmner State Transport Bus Stand from their village Kadlag and thereafter they had boarded the tempo for going to Gujrat as agricultural labourers. It is also a matter of record that the F.I.R. was lodged by one of the claimants Ulhas Deshmukh on the basis of which the driver of the tempo

was prosecuted for causing the accident by rash and negligent driving. Conspicuously, even in this F.I.R. it has not been mentioned that either claimant Ulhas Deshmukh or the deceased who was his son and the other claimants were travelling in the tempo along with their own goods or as the labourers or representatives of the owner of the goods. Obviously, post amendment in the year 1994 a risk to a person travelling along with goods in a goods carrying vehicle is mandatorily coverable under the provisions of Section 147 of the Motor Vehicles Act and he is to be treated as a third party. However, as has been rightly pointed out and concluded by the Tribunal by referring to the evidence, there is absolutely no material to show that these claimants and the deceased were travelling as the owners of the goods and the risk to whom could be deemed to have been covered under the Policy by virtue of such statutory mandate.

10. The Tribunal has also rightly noted the fact that the claimants had miserably failed to lead evidence to show that they had purchased the goods from some where and were to use it at some other place or that they were engaged as labourers by the persons who owned the goods. Even during the course of the arguments before this Court when a query was put to the learned advocate for the claimants as to if any of these claimants have claimed back the goods after occurrence of the accident either from the police or from the Magistrate, the learned advocate could not give any explanation/reply. In my considered view

this would be an additional circumstance which would buttress the conclusion drawn by the Tribunal, refuting the claim of the appellants that they were travelling in the tempo with their goods. Thus I find no sufficient and cogent reason but to subscribe to the conclusion drawn by the Tribunal.

11. As a logical and legal corollary, as has been laid down in case of *Asha Rani (supra)*, since all the claimants and the deceased were travelling as passengers in a goods vehicle and there is no evidence to show that they were travelling with goods so that risk to them could be deemed to have been statutorily covered by the policy, in fact there would be no contractual obligation on the part of the Insurance Company to indemnify the owner of the vehicle/insured. Consequently, even there would not be any reason and occasion to direct it to pay the compensation first and then to make it entitled to recover it from the respondent-owner of the vehicle.

12. Now turning to the decisions cited by the learned advocate for the appellants/claimants supra, so far as *Manuara Khatun (supra)* is concerned, in case of victim who was travelling in the offending vehicle as a gratuitous passenger a direction was given to the Insurance Company of the offending vehicle to first pay the compensation to the dependents of the victim and then to recover it from the owner of the offending vehicle. In doing so it followed the decision in the case of ***Manager National Insurance Company Ltd. Vs. Saju P. Paul (2013) 2 Supreme Court Cases 41***. Conspicuously, in the

case of *Saju Paul (supra)* the accident had occurred in the year 1993 when the claimant was 28 years old and while the matter was being decided by the Supreme Court he had turned 48 years old. Even in the case of *Manuara Khatun (supra)*, it was a 16 years old case and on this ground it was held that the facts in the case of *Saju Paul* and in that case (*Manuara Khatun*) were similar. Therefore, the claimants/appellants herein are not entitled to seek any direction to the Insurance Company to first pay the compensation and then to recover it from the respondent-owner, wherein I am deciding these appeals within 7/8 years of accident.

13. In the case of *Bhagwan Kundlik Mandhe (supra)* on the basis of the evidence obtaining in the case it was held that the risk to the deceased was duly covered by the policy and the owner as well as the insurer were held liable to pay the compensation jointly and severally. In case of *Sharjabai Devchand Sonone (supra)* again, there was evidence on record that the deceased was travelling in the goods vehicle along with his goods i.e. bullock-carts and obviously the appeal by the Insurance Company was dismissed. The appeal of the Insurance Company was dismissed by a Coordinate Bench by relying upon the decisions in the case of *Saju P. Paul, Manuara Khatun (supra)* which in my considered view do not govern the situation in the matter in hand when the accident in this case has taken place on 28.04.2012 and the claimants are before this Court and their appeals are being decided in the year 2019 less than eight years.

14. In case of *Rangrao Naval Patil* (supra), as has been correctly distinguished by the Tribunal, the deceased therein was travelling as the owner of the goods and consequently risk to him was held to be duly covered by the policy by virtue of Section 147 of the Motor Vehicles Act. Even in the case of *Gangavarapur Padmawati ( Supra)* the deceased was found to be travelling with goods. In the case of **New India Assurance Co. Ltd. Vs. Sita ; 2006 ACJ 2212** again there was evidence to show that all the 23 persons travelling in the goods vehicle were the labourers of the owner of the vehicle for loading and unloading the goods and an extra premium was paid to cover the risk to them and the Insurance Company was held liable.

15. The upshot of the above discussion is that there is no illegality committed by the Tribunal in exonerating the respondent/Insurance Company and fastening the liability to pay the compensation on the owner of the vehicle. The appeals are dismissed. In the circumstances the parties to bear their respective costs.

**( MANGESH S. PATIL, J. )**

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