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

901 FIRST APPEAL NO.496 OF 2019

BHARAT PIRAJI JADHAV AND ANR

VERSUS

BALAJI RAMBHAU SURYAWANSHI AND ORS

...

Advocate for Appellants : Adgaonkar Ravibhushan P And F.k. Patel
Advocate for Respondent No.1 & 2 : Mr. S.M. Vibhute
Advocate for Respondent No.3 : Mr.Chapalgaonkar S.G.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 21st JUNE 2019

ORDER :

1. Present appeal has been filed by the original opponents i.e. driver and owner of the vehicle challenging the judgment and award passed by the learned Motor Accident Claims Tribunal, Nilanga District Latur in Motor Accident Claim Petition No.32 of 2009 dated 29.01.2015, whereby the claim petition filed by present respondent Nos.1 and 2 was partly allowed and only the present appellants were held liable to pay compensation thereby exonerating original respondent No.3-Insurance Company.

2. Heard both sides. It will be necessary to take note of the facts before the tribunal at the initial stage. The original applicants were the parents of deceased minor Suresh. It is stated that Suresh was being labour and he along with other labours were travelling by offending tanker on 04.06.2008 from Nilanga to Nelwad. Respondent No.1 was the driver of the said tanker bearing No. MH-11 A-4598 and the said vehicle belongs to respondent No.2. The said vehicle was insured with respondent No.3 on the date of the accident. When the tanker came near Peth mode around 9.30 a.m, it turned turtle and it is stated that the accident had taken place due to the sole negligence on the part of respondent No.1. Suresh and others received severe injuries and were shifted to Government Hospital, Nilanga. It is stated that Suresh was then shifted to private hospital. His both legs were burnt because of hot tar and therefore, Doctor has amputed his both legs under knee. It is stated that he was totally disabled and during the pendency of the petition he is expired. It was stated that

Suresh was getting annual income of Rs.40,000/-. The compensation was claimed to the tune of Rs.21,00,000/-. However, it was restricted to Rs.4,00,000/- for the purpose of Court fees.

3. Opponent Nos. 1 and 2 filed their written statement denying the contents of the petition. They have not disputed that Suresh was travelling by the offending tanker in the capacity as labour. However, the allegation regarding negligence of respondent No.1 has been denied.

4. Respondent No.3-Insurance Company filed written statement and denied the averments regarding age, income and occupation of the deceased. It was stated that deceased was not labour, but a gratuitous passenger in a goods vehicle. So also, there is breach of terms of policy conditions as the driver was not holding valid and effective driving license on the date of the accident.

5. Taking into consideration the rival contentions, issues were framed. Parties have laid oral as well as documentary evidence. It is to be noted that only claimants have laid oral evidence. Taking into consideration the evidence on record, the learned tribunal has allowed the petition partly. Opponent Nos.1 and 2 were directed to pay jointly and severally amount of Rs.2,00,000/- by way of compensation with interest at the rate of 6% per annum from the date of the petition till actual realization of the entire amount. Claim as against respondent No.3 was rejected by holding that there is no evidence to show that the injured was travelling as labour of the tanker owner. Hence, this appeal by original respondent Nos. 1 and 2.

6. At the outset, it can be said that the Insurance Company has not challenged the award in any manner and original claimants have also not filed any appeal regarding the amount of compensation that has been awarded. Therefore, the scope of the appeal is restricted to the point as to

whether the exoneration of the Insurance Company by the tribunal was correct and legal or not. Therefore, taking into consideration the scope of the appeal, following points are framed and findings therefore, are as follows :

(i) Whether the learned Member of Motor Accident Claims Tribunal were justified in exonerating respondent No.3 from the liability to pay compensation or in other words, whether there was breach of terms of policy ?

(ii) Whether interference is required in the award ?

7. Both the points are taken up together for discussion for the sake of convenience and to avoid repetition. It has been vehemently submitted on behalf of the appellants that in **Bharat Piraji Jadhav and Anr. Vs. Rajkumar Baliram Suryawanshi and Ors., (2016) SCC online Bom 2694,** which was arising out of the same accident, this Court had allowed the appeal filed by the present appellants and the award passed by the same tribunal was set aside. The

claim was allowed as against the Insurance Company also and therefore, he submitted that the similar view deserves to be taken. Taking into consideration the fact that on the facts also this Court has opined that the deceased therein and the other persons travelling from tanker were travelling as labours.

8. The learned Advocate for respondent Nos.1 and 2 has supported the submissions made by the appellants.

9. Per contra, the learned Advocate appearing for respondent No.3 submitted that the facts in this case are required to be considered separately as it was required to be seen as to whether Suresh could have been said to be the labour. He also submitted that Opponent Nos. 1 and 2 have not entered into the witness box. Opponent No. 2 has not made a submission that he has engaged Suresh as labour. Suresh was admittedly minor on the date of the accident. Therefore, the view taken in the decision

given by this Court, earlier in another matter, cannot bind this Court as the facts are required to be reassessed in this case. He also submitted that as there was no evidence adduced to prove that Suresh was labour, it will have to be taken into consideration that he was a gratuitous passenger and admittedly, the offending vehicle was a tanker which was a goods vehicle and therefore, the risk of gratuitous passenger was not covered by the policy. He, therefore, submitted that the learned tribunal had rightly exonerated the Insurance Company.

10. The first and the foremost fact that deserves to be taken note of is that, the deceased in the case relied by the appellants i.e. **Bharat Piraji Jadhav and Anr. Vs. Rajkumar Baliram Suryawanshi and Ors. (Supra)**, was arising out of the same accident. The record and proceeding was seen by this Court at that time and it has been observed in paragraph No.4 of the judgment that :

> *"4. Copy of insurance policy is on the record and it shows that at the relevant time the vehicle was insured with respondent no.3. Premium in respect*

of 6 persons was paid for giving coverage under the Workmen's Compensation Act. The learned for the insurance company submits that in view of Rule 108 of the Maharashtra Motor Vehicles Rules, no person except driver and cleaner could have been allowed to travel in the truck-tanker and so it needs to be presumed that risk of the deceased was covered. In view of the contents of the policy this Court holds that this submission made by the insurance company is not acceptable. When the insurance given had the cover to the employees of the owner, now it cannot deny the liability by showing some rules made by the State Government under the Motor Vehicles Act."

11. The same policy is applicable to this case also. Under such circumstance, when these are the observations by this Court itself, different opinion cannot be given. So also, then it was for the Insurance Company to explain as to how they have charged premium in respect of 6 persons under the Workmen's Compensation Act. The rule on which reliance was placed, was very much in existence in the statute at that time also, when the premium was received. The Insurance Company preferred not to laid any oral evidence to explain if there was any anomaly. Under such circumstance, same view is required to be taken in this case also. When it

comes to the question of whether the risk of Suresh in this case was covered under the policy or not.

12. Another point that is raised is in respect of age of the deceased that the minor could not have been engaged as labour. It is to be noted that it may be a social requirement that a minor should not be employed as labour but then the hard reality of life cannot be sidelined. If the financial circumstances of the minor are such that he has to work, then if he has been given a work, then anything which is in favour of him, benefit of the same to be given to the him because he was serving for his family.

13. In this respect also, it can be observed that in the above said case, deceased was 14 years old girl and it was observed by this Court that :

> "Even if the deceased was below 14 years of age, this Court holds that such defence could have been considered. If she was really below age of 14 years as per the defence of the insurance company, in such case person employing child labour can be penalised but the victims cannot be denied the

compensation on that ground.”

14. Therefore, taking into consideration the above observations, it can be seen that the learned member had not considered the contents of the policy in a proper perspective. So also, when the fact that deceased was employed as labour, was admitted by respondent Nos.1 and 2, then further evidence could not have been laid. The learned tribunal erred in holding that Suresh was gratuitous passenger. Taking into consideration the above findings, it is held that the risk of the deceased was covered under the policy and therefore, respondent No.3 is also liable to pay the amount of compensation jointly and severally with respondent Nos.1 and 2. Hence, following order is passed :

ORDER

(I) The appeal is allowed.

(II) The judgment and award passed in Motor Accident Claim Petition No.32 of 2009 dated 29.01.2015 by learned Member Motor Accident Claims Tribunal, Nilanga is hereby set aside to the extent of exonerating respondent No.3.

Respondent No.3 is held liable jointly and severally to pay the amount awarded as compensation. Rest of the order ramain as it is.

(III) Learned Advocate for the Insurance Company seeks time to challenge the decision. Therefore, time of five weeks is granted.

(IV) Original appellants/respondent Nos.1 and 2 are allowed to withdraw the amount which has been deposited in this Court.

(Smt. Vibha Kankanwadi, J.)

Shubham/