

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1804 OF 2018.

Shriram General Insurance Company Ltd.,
Through It's Authorized Signatory,
Having Office At E/8, EPIP, Risco Industrial
Area Sitapura, Jaipur (Rajasthan).
(Original Respondent No.3) **...Appellant.**

VERSUS

- 1) Laxman Manik Jadhav,
Age 55 years, Occupation Agriculture,
R/o Raimoha Tq. Shirur (K) Dist.Beed.
(Original Claimant)
- 2) Lahu Shamrao Dhakne,
Age Major, Occupation Agriculture,
R/o Raimoha Tq. Shirur (K) Dist.Beed.
(Original Respondent No.1)
- 3) Shaikh Hamid s/o Shaikh Suleman,
Age Major, Occupation Driver,
R/o Tagadgaon Tq. Shirur (K)
Dist. Beed.
(Original Respondent No.2) **...Respondents**

Advocate for Appellant : Mr. S. G. Chapalgaonkar.
Advocate for Respondent No.1 : Mr. K. F. Shingare.
Advocate for Respondents No.2 and 3 : Mr. N. L. Jadhav
holding for Mr. R. C. Bramhankar.

CORAM : SMT.VIBHA KANKANWADI, J.

**Date Of Reserving The Judgment :
26-08-2019.**

**Date Of Pronouncing The Judgment :
22-10-2019.**

JUDGMENT :

1. Present appeal has been filed by the original respondent No.3 – Insurance Company challenging the Judgment and award passed by

learned Adhoc District Judge-1 and Member, Motor Accident Claims Tribunal, Beed, in M.A.C.P. No.87 of 2013, dated 11-01-2018, thereby holding the present appellant liable to pay compensation to the claimant jointly and severally with original respondents No.1 and 2.

2. The factual matrix leading to the appeal are ;

That the original claimant i. e. present respondent No.1 filed the said petition under Section 166 of the Motor Vehicles Act for getting compensation on account of injury sustained by him in a vehicular accident. He contended that, he had gone to Bhandar-Kavta Dist. Solapur for sugarcane cutting work, in the jurisdiction of Lok Mangal Sugar Factory, for the crushing season of 2011. After the season was over, he and other villagers along with their bulls and articles were returning to their village in Truck bearing No.MH-04/BG-3482. When they were in the Shirapur Dhumal shivar on Rajuri to Raimoha road on 22-05-2011, at about 07.00 a.m., due to the rashness and negligence in the driving of the respondent No.2 of the said truck, the said truck turned turtle and fell into the ditch by the side of the road. The said accident had taken place due to the sole negligence on the part of respondent No.2. Claimant sustained serious injuries like fracture to his left humerus and other parts of the body. All the eight persons and one bull travelling from the said truck were injured. The claimant was taken to Civil Hospital, Beed, where he was treated till 25-05-2011. Thereafter, he was again admitted in Saibaba Hospital, Beed on 02-09-2011 and discharged

on 17-09-2011. He was thereafter examined by the Orthopedic Board of District Hospital, Beed for the disability, and it has been opined that, he has sustained permanent physical disability to the extent of 10 %. It is stated that, the claimant is an agriculturist and he owns 2 ½ Acres of land which he used to cultivate personally by attending the crushing season of the sugarcane at various places. He used to earn Rs.500/- per day during the season. Average income of the claimant was not less than Rs.5000/- per month. Now he cannot work as before as his left hand is almost crippled. The claimant claimed compensation of Rs.12,15,000/-, but restricted the same for the purpose of Court fee to the extent of Rs.5,00,000/-. The said truck was owned by respondent No.1 and it was duly insured with respondent No.3 on the date of the accident.

3. Respondents No.1 and 2 have filed joint written statement and admitted that, the claimant and other injured persons with their articles and bulls were travelling from the truck owned by respondent No.1 and driven by respondent No.2. It has been further contended that, the vehicle was insured with respondent No.3. Averments regarding negligence on the part of respondent No.2 has been denied. It is stated that, the accident took place due to the 'Act of God.'

4. Respondent No.3 filed separate written statement and denied all the averments except the fact that the truck owned by

respondent No.1 was insured with it on the date of the accident. It has been contended that, the driver of the truck was not holding valid and effective driving licence to drive the said truck. So also the truck was not holding valid permit and fitness certificate. Respondent No.1 has committed breach of terms of policy as he allowed the claimant and others to travel as passengers from the goods vehicle whose risk was not covered under the policy. The Insurance Company, therefore, claimed exoneration.

5. After framing of issues, all the parties have led oral as well as documentary evidence. Taking into consideration the evidence on record, the learned Tribunal has come to the conclusion that the accident had taken place due to the negligence on the part of respondent No.2. Claimant has suffered permanent physical disability due to the said accident, and therefore, entitle to receive compensation. It has been further held that, the respondent No.3 has failed to prove breach of terms of policy, and therefore, all the respondents have been held to pay compensation to the claimant jointly and severally. Compensation of Rs.94,300/- has been awarded together with 8 % interest from the date of the institution of the petition till actual realization of entire amount. This award is challenged by the respondent No.3 in this appeal.

6. Heard learned Advocate Mr. S. G. Chapalgaonkar for appellant, learned Advocate Mr. K. F. Shingare for respondent No.1, and learned

Advocate Mr. N. L. Jadhav holding for Mr. R. C. Bramhankar for Respondents No.2 and 3.

7. It has been vehemently submitted on behalf of the appellant – Insurance Company that, the Insurance Company is not challenging the quantum, however the scope of the appeal is limited to the extent of holding the Insurance company liable to pay compensation together with respondents No.1 and 2. It has been submitted that, the evidence that was led by the claimant as well as the respondents No.1 and 2 would show that, neither the claimant nor the passengers who were travelling from the truck had engaged the said truck. In categorical terms they have stated that, they have not paid charges for the transportation of their goods to either respondent No.1 or respondent No.2. The respondent No.1 who had entered the witness box has not stated that, who had paid the charges to him for the said transportation. This shows that, the claimant and other witnesses who were examined by the respondent No.1 were in fact gratuitous passengers. The terms of the policy were explained by the witness who was examined on behalf of the Insurance Company i.e. RW Deepali Panwar. Therefore, as per the policy as well as amendment carried out in 1994 to the provisions of Section 147 of Motor Vehicles Act 1988, risk of only three persons were covered in the said truck i.e. goods vehicle, those are ;

- (1) Employee of the owner of the vehicle ;
- (2) Owner of the goods ; And

(3) Authorized representative of owner of the goods.

The claimant in categorical terms has stated that, he was not the employee of respondent No.1. Though he contended that, he was travelling along with his bull and household articles yet he has not paid charges for the said transport. Further he has not come with a case that, the sugar factory who had engaged them or any other employer whose goods were being transported, had authorized him to travel along with the goods. Under such circumstance, the risk of those passengers were not at all covered by the Insurance policy, they cannot be said to be the “third party”, and therefore, the learned Tribunal ought to have exonerated the Insurance Company by holding that, there is breach of terms of policy by respondent No.1.

8. In order to buttress his submissions, he has relied on following authorities ;

- (a) New India Assurance Co. Ltd. Versus Asha Rani and Others, reported in (2003) 2 Supreme Court Cases 223;*
- (b) New India Assurance Co. Ltd. Versus Vedwati And Others, reported in (2007) 9 Supreme Court Cases 486;*
- (c) National Insurance Company limited Versus Rattani And Others, reported in (2009) 2 Supreme Court Cases 75;*
- (d) Lahu Lakma Bije Versus Kirtikumar Dayalji Kothari and Another, reported in 2010 (1) Mh.L.J. 973;*
- (e) United India Insurance Company limited Versus Suresh K.K. And Another, reported in (2008) 12 Supreme Court Cases 657;*

(f) *United India Insurance Co. Ltd. Versus Anubai Gopichand Thakare and others*, reported in 2008 (1) Mh.L.J. 73;
(g) *Oriental Insurance Co. Ltd. Versus Devireddy Konda Reddy And Others, With Oriental Insurance Co. Ltd. Versus Jogi Subbamma And Others*, reported in (2003) 2 Supreme Court Cases 339;

9. Learned advocate for respondent No.1 claimant supported the reasons given by learned Member. It was submitted that, the claimant had come with a clear case that, he was travelling along with his goods. Even the witness who was examined by the Insurance Company admitted in her cross that, the owner of the goods can travel from goods carriage and she had no knowledge as to whether the persons whose household articles were in the truck were only travelling from the truck at the relevant time. Under such circumstance, it will have to be held that, there was no breach of terms of policy. The Insurance Company has failed to prove that, claimant was a fair paid / gratuitous passenger. He relied on the decision in, *Kulwant Singh and Others Versus Oriental Insurance Company Ltd.*, reported in 2015 (1) All. M.R. 481, wherein it was held that,

“If there is no breach of terms of policy, there is no question of exonerating the Insurance Company or on any other count order of pay and recover can be passed.”

10. The learned advocate appearing for respondents No.2 and 3 i.e. the owner and driver of the truck supported the submissions

made on behalf of the claimant as well as he also supported the reasons given by the learned Member while holding the Insurance Company liable to pay compensation jointly and severally.

11. At the outset, when the scope of the appeal is limited, we need not go into the other aspects, and therefore, the only point that arises for determination in this case is ;

“Whether there was breach of terms of policy ? If yes, then what order ?”

12. The claimant in this case in his pleadings as well as in his examination in chief has stated that, after the sugarcane cutting season was over, he was travelling from the said truck with his household articles as well as bull. Similarly the other villagers from his village, were also travelling from the same truck with their household articles and bulls. However, the claimant has not come with a case that, either he himself or all the villagers together had engaged the said truck by giving necessary charges to the respondent No.1 for the transportation of their belongings. The term used in Section 147 of the Motor Vehicles Act as, “*owner of the goods,*” cannot be taken simply as the owner of those goods which were being transported from the vehicle. It presupposes that, transportation charges of transporting those goods are paid by such person, and in that capacity, that person is the 'owner of the goods'. The cross-examination of the claimant taken by Insurance Company would show that, he was not having any knowledge that the

transportation of passengers in goods vehicle is not permitted. In clear terms he says that, he had not paid rent or charges for the transportation to respondent No.1 and 2. It has been got reiterated from him that, he was travelling without payment of fair in the said truck. It appears that, the learned Tribunal has misconstrued the term "fair paid passenger". The said fair paid passenger term can be used for private vehicle only and not for goods transportation vehicle. For goods transportation, fair has to be paid for the goods. The claimant states that, he was not knowing the owner as well as driver of the truck. He never got acquainted with them prior to the accident. If these admissions are considered then definitely it cannot be said that, the claimant can be categorized as, "owner of the goods," contemplated under Section 147 of the Motor Vehicles Act.

13. Respondents No.1 and 2 have examined RW Rajendra @ Shankar Kashinath Jagtap, who was also travelling from the same truck. It appears that he has been examined to support the contention of the respondents No.1 and 2 that, due to the bursting of a tyre the truck went out of control and then turned turtle. As aforesaid, the said finding is not challenged by the respondents, and therefore, we need not go into that aspect. However, as regards his capacity to travel from the said truck is required to be considered. In his cross examination taken on behalf of the Insurance Company, he has claimed ignorance as to who had paid rent / travel charges to the truck owner. He also says that, he was not labour engaged on

the truck. This witness rather in clear terms admits that, all of them were travelling from the said truck illegally. Important point to be noted is that, there was no re-examination of this witness. Therefore, from the testimony of this witness also it can be said that, none of the passengers who were travelling from the said goods truck had paid fair for transportation of their goods, and therefore, it cannot be stated that, they were the owners of the goods which would have been contracted to be transported by respondents No.1 and 2.

14. RW Lahu Shamrao Dhakane is the respondent No.1. In his examination he has not at all disclosed as to how he had given his vehicle to the claimant and others for use and thereby they were transporting their household articles. He has not come with a case that, any other person had paid charges for the transportation of those goods to him. He only says that, his truck was given on contract to the sugar factory for transportation of sugarcane. If the truck was given on contract for transporting sugarcane then it cannot be stated that, it could have been used by him for transportation of the labour along with the goods of the labour under the said contract. He has not produced the said contract which he had entered into with the sugar factory. Production of that contract was necessary to explain that, it was the part of his contract to fetch the labour from their village along with their articles to the site of the sugar factory, and after the season is over, then those labour along with their articles should be left back to their respective villages.

Therefore, from any angle if we consider the said fact, it does not lead to a conclusion that the claimant was travelling from the truck owned by respondent No.1 and driven by respondent No.2 in the capacity as “owner of the goods”, as contemplated under Section 147 of the Motor Vehicles Act. In view of *Devireddy Konda Reddy and Others Vs. Oriental Insurance Co. Ltd., (Supra)*, vehicle owner was not required to get Insurance in respect of persons travelling in a goods carriage, and therefore, the insurer was not under liability to cover the risk of those passengers.

15. Further in view of, *United India Insurance Co. Ltd. Vs. Anubai Goichand Thakare and Other (Supra)*, gratuitous passenger cannot be regarded as third party. Same ratio is laid down in, *United India Insurance Company limited Vs. Suresh K.K. And another (Supra)* and *New India Assurance Co. Ltd. Vs. Vedwati And Others (Supra)*. Further in view of, *New India Assurance Co. Ltd. Vs. Asha Rani And Others (Supra)*, the person travelling from the vehicle cannot be termed as third party. Therefore, the risk of the claimant was not at all covered under the policy, and therefore, the testimony of RW Deepali Panwar ought to have been accepted by the learned Tribunal. The ratio laid down in, *Kulwant singh and Others Versus Oriental Insurance Company Ltd. (Supra)*, cannot be disputed, however it was a case where defence was taken that the driver was not holding valid and effective driving licence, but then on the facts it was considered that, there was no breach of terms of policy, and

therefore, it was held that, the Insurance Company cannot avoid its liability. Here in this case as aforesaid, the claimant will have to be termed as gratuitous passenger as he had not paid charges for the transportation of his goods nor those charges were paid by anybody on his behalf, and therefore, Insurance Company i. e. present appellant ought to have been exonerated by the learned Tribunal. The point is therefore answered in the affirmative. For the said reasons, the appeal deserves to be allowed. When the risk of the claimant was not at all covered, there was no question of passing any order of pay and recover against the Insurance Company. The Insurance Company will have to be exonerated completely. Hence, following order.

ORDER

- (1) Appeal is hereby allowed.
- (2) The Judgment and award passed in MACP No.87 of 2013, by learned Adhoc District Judge-1 and Member MACT, Beed dated 11-01-2018, is hereby set aside to the extent of holding respondent No.3 Insurance Company liable to pay compensation jointly and severally with respondents No.1 and 2. The said claim petition stands dismissed as against the respondent No.3.
- (3) Under the said circumstance, no order as to costs.
- (4) Amount deposited by the Insurance Company be refunded to the Insurance Company.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-