IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2029 OF 2010

The United India Insurance Company Ltd. through its Division Office, Divisional Manager, the United India Insurance Company, Aurangabad. ... **APPELLANT** (Orig. Rspdnt No.3)

VERSUS

1. Bismilla w/o Maheboob Shaikh, Age - 70 years, Occu: Nil,
2. Halima w/o Jabbar Shaikh, Age – 35 years, Occu. household,
3. Shadul s/o Jabbar Shaikh, Age: 20 yrs Occu : Labour,
4. Yadul s/o Jabbar Shaikh, Age – 19 yrs Occ : Education

   All R/o Ambegaon Tq. Ahmadpur Dist. Latur.
5. Shakir s/o Babusaheb Shaikh @ Sayyad, Age : 30 yrs Occu : Driver R/o Chobali Tq. Ahmadpur Dist. Latur.
6. Rajaram s/o Namdeo Jagtap, Age : 55 yrs Occ : Business and Agri R/o Ambegaon Tq. Ahmadpur Dist. Latur.

Respondents (Res.no.1 to 4 orig. claimants Res.no. 5 & 6 Orig. Res.no.1&2)

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Mr. S.V. Kulkarni, for the Appellant.

Mr. N. D. Kendre, for respondent Nos.1 to 4.

Mr. V. D. Gunale, for Respondent Nos. 5 and 6.

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CORAM : SUNIL K. KOTWAL, J.

Date : 10th June, 2019

JUDGMENT:

1. This appeal is directed by original opponent No.3 i.e. insurer of offending tractor bearing No.MH-24E-3674 and trailer bearing No.MH-24-D-2379, against the judgment and award passed by the Motor Accident Claim Tribunal, Udgir Camp at Ahmedpur, whereas, compensation of Rs.3,70,000/- was awarded and joint and several liability was fastened against original opponent Nos. 1 to 3. The respondent Nos. 1 to 4 are the original claimants. Respondent No. 5 is the driver of the offending tractor and trailer and respondent No. 6 is the owner of the offending vehicle.

2. Facts leading to institution of this appeal are that on 22.04.2008 deceased Jabbar Shaikh; who used to work as labour on the offending tractor, after loading goods in the trailer, was traveling by sitting on the head of tractor behind the back of driver. When the tractor was proceeding towards Ahmedpur, due to rash and negligent driving by the driver of the tractor, the deceased fell down and sustained injuries, resulting into his death. As the accident occurred due

to rash and negligent driving by driver of the offending tractor, the claimants filed claim petition under Section 166 of the Motor Vehicles Act for compensation.

3. By filing written statement, Ex.18, the owner of the tractor denied the contents of the claim petition and in the alternate submitted that as the tractor was insured with opponent No.3 insurance company, only opponent No. 3 is liable to pay the compensation.

4. Even the opponent No.3 filed written statement Exh.22 and raised objections that the tractor being goods vehicle, risk of the deceased who was traveling by the tractor as passenger is not covered under the policy of insurance of the offending tractor. Statutory evidence was also raised that driver of the tractor did not hold valid and effective driving license and thereby the owner of the tractor committed breach of condition of the policy of the insurance.

5. However, the Tribunal rejected all the contents of opponent and awarded the compensation. Therefore, this appeal is preferred by insurer of the offending tractor and trailer. Neither the owner of the offending tractor nor the claimants filed cross-

objection or cross-appeal.

6. Heard Mr. S.V. Kulkarni learned counsel for appellant, Mr. N.D. Kendre learned counsel for respondent Nos. 1 to 4 and Mr. V.D. Gunale for respondent Nos. 5 and 6.

7. Learned counsel for the appellant assailed the judgment and award on the ground that on the date and time of the occurrence of the accident, the driver of the offending vehicle did not hold valid and effective driving license to drive the tractor. However, in reply, learned counsel for respondent Nos. 1 to 4 has drawn my attention towards evidence of DW-1 Mr. Raghuttam P. Naikwade examined on behalf of insurer, who is the employee in Deputy R.T.O. Office at Latur. This witness has brought on record that on the date of accident, the driver of the offending vehicle held driving license to drive light motor vehicle (Non-Transport) which was valid from 23.01.2003 to 22.01.2023. The accident occurred on 22.04.2008. Thus, on the date of occurrence of the accident, driver of the tractor held valid and effective driving license to drive light motor vehicle (Non-Transport). In the case of **Mukund Dewangan Vs. Oriental Insurance Company Limited (2017) 14 Supreme Court Cases 663,** the Apex

Court has made it clear that the driver holding license to drive light motor vehicle can drive any category of light motor vehicle. Therefore, because the driving license of the driver of the offending vehicle did not carry endorsement to drive "tractor", the driving license does not become invalid. Therefore, I hold that on the date of occurrence of the accident, the driver of the offending tractor held valid and effective driving license to drive the tractor.

8. Second objection raised by learned counsel for the appellant is that the tractor attached with trailer is goods vehicle and as per contents of petition itself, it was used for transport of the goods and therefore, the farmers policy of the insurance does not cover the risk of deceased who was travelling by tractor as passenger. He has also pointed out that the policy of the insurance does not cover the risk of even labour travelled by the trailer as no premium for labour was paid by the owner. To substantiate his contention, he placed reliance on **United India Insurance Company Limited Vs. Sarjerao and Others [2007 DGLS(SC) 1272]** and **Oriental Insurance Co. Ltd. Vs. Brij Mohan & Ors. 2007 (7) SCALE 753**, wherein, it is ruled that labour travelling in trailer of the tractor, risk

of such passenger is not covered by the policy of the insurance. Similar view was also expressed by the Division Bench of this Court in **New India Assurance Co. Ltd. Vs. Vedwati and Ors [2007 (2) T.A.C. Page 8 (S.C.)]** and in **United India Insurance Co. Ltd. Vs. Laila Ayyub Sayyad and Ors.,** decided by this Court on 20.12.2016 in FA No.1324/2012.

9. In reply, learned counsel for claimants submits that the tractor being insured under the farmers policy, the risk of labour travelling by the said tractor is also covered under the policy of the insurance. In the alternate, it is submitted by the learned counsel for the claimants that even if, this Court holds that risk of the deceased is not covered under the policy of the offending vehicle, even then, in view of law settled by the Apex Court in **Shivawwa and Anr Vs. Branch Manager, National India Insurance Co. Ltd. [(2018) 5 SCC page No. 762]** at least pay and recover order can be passed against the insurer of the offending vehicle.

10. With the help of learned counsels for both the parties, I have gone through the record and proceedings of the case and deposition of the witnesses. From the copy of the FIR Ex.30 which is relied on by claimants,

it emerges that the offending tractor and trailer were used as goods vehicle for transporting goods and at the time of accident, the deceased was sitting on the head of the tractor as labour. Even claimant Shadul Shaikh PW-1 deposed on oath before the Tribunal that his father used to work as labour on the tractor of opponent No.2. Thus facts remained on record unchallenged that at the time of accident, the deceased was travelling by the tractor and trailer used for transport of the goods as labour of the owner of the tractor. However, the policy of the insurance - Ex.35 shows that risk of the labour is not covered under the policy of the insurance. The policy of the insurance makes it clear that the said tractor and trailer cannot be used for transport of passenger and for transport of goods at the time of accident. This policy of the insurance, nowhere, shows that risk of the labour travelling by the said tractor and trailer is covered under the policy of the insurance. This important fact is also proved by the insurer of the offending tractor by examining Ramrao Salunke DW-2 who has duly proved the policy of the insurance of the tractor and trailer. This witness has made it clear that the said policy pertains to 'farmers package' insurance policy and premium for labour was not paid by the owner of the offending tractor. Thus, obviously the risk of the deceased who was travelling by offending tractor as labour; is not at all covered under the policy of the insurance of offending vehicle. Therefore, the appellant insurer of the offending vehicle is not liable to indemnify the owner of the offending vehicle.

11. However, in "Shivawwa and Anr Vs. Branch Manager, National India Insurance Co. Ltd." (Supra) in para 13, Apex Court observed that:

> 13. Assuming for the sake of argument that the insurance company was not liable to pay compensation amount awarded to the claimants as the offending tractor was duly insured, the insurer would still be liable to pay the compensation amount in the first instance with liberty to recover the same from the owner of the vehicle owner (respondent No.2), in light of the exposition in National Insurance Co. Ltd. Vs. Swarn Singh (2004) 3 SCC 297 in paragraph 110 of the said decision, a three-Judge Bench of this Court observed thus:
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> "110. The summary of our findings to the various issues as raised in these petitions are as follows:
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> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.
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> (ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or

Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149 (2) (a) (ii) of the said Act.

(iii) *******************

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) – (ix) *****************

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149 (2) read with Sub- section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against the insured by relegating them to the remedy before,

> regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims."

12. Thus, in view of this law settled by Apex Court, though appellant - insurer of the offending tractor is not liable to indemnify the owner of the offending vehicle, even then, "pay and recover" order can be passed against the appellant-insurer of the offending tractor and trailer. In the result, this appeal deserves to be partly allowed only to modify the award passed by the tribunal as under.

13. First Appeal No.2029/2010 is partly allowed.

14. The judgment and award passed by the Motor Accident Claim Tribunal, Udgir Camp At Ahmedpur in MACP No.7/2010 is modified as under:

"i) Petition is partly allowed, with proportionate cost to the claimants.

ii) Opponent Nos. 1 and 2 do jointly and severally pay compensation of Rs.3,70,000/- inclusive of no fault liability, with interest @ 9% per annum from the date of filling of petition till its realization.

iii) Respondent No. 3 – United India Insurance

Company Limited is exonerated from its liability to indemnify opponent No. 2. However, opponent No.3 - insurer shall pay the entire compensation amount of Rs.3,70,000/- with accrued interest thereon to the claimants within three months from the date of passing of this order. Later on, the insurer of the vehicle will be at liberty to recover the entire compensation amount paid to the claimants from the insured (owner of the offending tractor and trailer) by initiating appropriate proceedings before the executing Court, as if the dispute between the insurer and the owner was subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before disbursement of compensation amount, the Tribunal shall issue notice to the owner of the offending vehicle and the owner shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending tractor bearing No.MH-24E-3674 and trailer bearing No.MH-24-D-2379, shall be attached, as part of the security and if necessity arises, the executing Court shall take assistance of the concern Regional Transport Authority. The executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured – owner of the vehicle shall make payment to the insurer. In case there is any default, it shall be open to the executing Court to direct realization by disposal of securities to be furnished or from any other property or properties of the owner of the vehicle – the insured.

iv) The compensation amount shall be equally apportioned in between the claimants. On deposit of the compensation before the tribunal, it shall be paid to the claimants through tribunal by separate account paid cheques.

v) Award be drawn, accordingly".

15. The award passed by the Motor Accident Claim Tribunal at Udgir Camp at Ahmedpur in MACP No.7/2010 be modified in above said terms.

16. The amount of compensation deposited in this Court be transmitted to the Motor Accident Claim Tribunal, Ahmedpur, District Latur for its disbursement in accordance with the modified award and for compliance for above directions.

17. The claimants are permitted to withdraw the deposited compensation amount in accordance with modified award only after the above directions are complied.

18. Appeal is dispose of in above said terms. Parties to bear their respective costs of the appeal.

19. Copy of this Judgment forwarded to the concerned Deputy R.T.O.

(SUNIL K. KOTWAL, J.)

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