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

**FIRST APPEAL NO.1622 OF 2004**

Radhakishan s/o. Dnyandeo Talekar,
Age : 41 years, Occu: Business & Agri,
R/o. Shahpur, Tq. Ambad,
Dist. Jalna. .. **APPELLANT**
**(Ori. Resp.No.2)**

**VERSUS**

1. Gulab S/o Dhondiram Chavan
Age : 39 years, Occu: Contractor,
R/o. At present Mukundwadi,
Tq. & Dist. Aurangabad.

2. Manisha D/o. Gulab Chavan
Age: 12 years, Minor.

3. Amol S/o. Gulab Chavan,
Age : 10 years, Minor.

4. Rani D/o. Gulab Chavan,
Age : 8 years, Minor

5. Akshay S/o. Gulab Chavan
Age : 5 years, Minor.

Respondent Nos. 2 to 5 are
U/G of Respondent No.1 who is
real father of Respondent
Nos. 2 to 5.

6. Shivaji S/o. Narayan Giri,
Age : 44 years, Occu: Driver,
R/o. Dodadgaon, Tq. Ambad,
Dist. Jalna.

7. United India Assurance Co. Ltd.,
through Divisional Manager,
Divisional Office, 5-4-76,
Osmanpura, Aurangabad. .. **RESPONDENTS**
**(Resp. No.1 to 5 ori. claimants, Resp. Nos. 6 & 7 Ori. Resp. Nos.1 & 3)**

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Mr.A.J. Mete, Advocate for the appellant.
Mr.P.K. Lakhotia, Advocate for the respondent nos.1 to 6.
Mr.S.G.Chapalgaonkar, Advocate for respondent no.7.

…

**CORAM : V.L.ACHLIYA,J.**
**DATE : 15.01.2020**

**JUDGMENT :**

Being aggrieved and dissatisfied by the judgment and award dated 21.07.2004 passed by the Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.194/2000, the appellant (original respondent no.2)-owner of the vehicle has preferred this appeal.

2. Heard learned counsel for the appellant and counsel representing the

respondents. Perused the record and proceedings.

3. For the sake of brevity and convenience, the parties to appeal are referred as they are referred in the judgment of Tribunal.

4. Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of Claim Application.

5. The original claimants (Respondent nos.1 to 5) had filed application under section 166 of the Motor Vehicles Act seeking compensation of Rs.1,50,000/- on account of accidental death of deceased Sindhubai Gulab Chavan, the wife of claimant no.1 and the mother of claimant nos.2 to 5. They approached with a case that on 19.03.2000,

deceased Sindhubai was travelling in Metador bearing registration No.MH-21-5951 owned by respondent no.2 and insured with respondent no.3. At the time of accident, the Metador was driven by respondent no.1. Due to rash and negligent driving on the part of the respondent no.1, Matador turn turtled and resulted into causing injuries to deceased Sindhubai and other passengers sitting in the Metador. The claimants have claimed that the deceased was doing tailouring work and earning Rs.3,000/- per month. On account of accidental death, the claimants have claimed compensation of Rs.1,50,000/- as pecuniary and non-pecuniary loss caused to them.

6. The respondent nos.1 and 2 resisted the Petition with contention that there was no negligence on the part of the driver of Metador. It is claimed that at the time of accident, one bullock-cart was coming from

front side. The driver of Metador applied breaks. The joint of Metador was cracked which resulted into an accident.

7. The respondent no.3 – insurance company resisted the claim with contention that the vehicle in question is a Goods Vehicle. At the time of accident, the vehicle was used in breach of Permit and the policy. As many as 30 persons were unauthorizedly carried as passenger in Metador for hire and reward. The respondent no.2 has committed breach of conditions of policy by allowing use of vehicle for carriage of passengers in contravention of permit and breach of terms of policy. On account of breach of policy condition and contravention of permit, the respondent no.3 denied to indemnify respondent no.2-insured.

8. In support of the claim, the

claimants have examined the claimant no.1(respondent no.1) and further produced certain documents which were admitted in evidence. The respondents have not examined any witness.

9. The Tribunal has allowed the claim application and awarded the compensation of Rs.75,000/- with future interest @ 6% p.a. from the date of filing the Petition till its realization by making the respondent nos.1 and 2 jointly and severally liable to pay the compensation. The claim application came to be dismissed against the respondent no.3. Being aggrieved, the appellant - original respondent no.2 preferred this appeal.

10. In brief, it is the contention of learned counsel for the appellant that the Tribunal has erred in dismissing the Petition against the respondent no.3. It is contended

that the vehicle in question was insured with respondent no.3. The respondent no.3 – insurance company has failed to prove that the vehicle in question is a Goods Carriage vehicle and the same was used in violation of terms and conditions of the policy. It is submitted that the Tribunal has failed to take into consideration that the deceased was travelling in Metador along with goods which she was carrying. She was carrying Jawar bags as goods for the purpose of transportation and for the safety of the goods she was travellng along with goods in vehicle.

11. Mr.S.G. Chapalgaonkar, learned counsel for the respondent – insurance company supported the judgment and order passed by the Tribunal. By referring the pleadings and evidence on record, the learned counsel submits that there is absolutely no perversity in the reasons and findings

recorded by the Tribunal to exonerate the respondent – insurance company. It is submitted that there is no dispute that the vehicle in question was registered as goods carrying vehicle. The first information report itself spell out that at the time of incident, 25-30 persons were travelling in Metador from Pachod to go to their village Wadigodadi. All of them boarded from Pachod Bus Stop. The Metador in which deceased and other persons were travelling turn turtled and resulted in causing injury to informant Premchand Pawar and more than 17-18 passengers travelling in vehicle. The spot panchanama itself reflects that the deceased and other persons were travelling in said vehicle registered for carriage of the public goods. The spot panchanama Exhibit-28 rules out the case of the appellant that deceased and other persons were travelling in Metador along with their respective goods for safety and carriage of goods in vehicle. The certificate of registration produced at Exhibit-37 establishes the fact that the vehicle in question i.e. Tata 407 Metador was registered as Light Motor Vehicle to be used for carriage of goods. The type of the body of vehicle recorded as open goods vehicle. It is further submitted that the copy of the permit produced at Exhibit-35 further establishes that the vehicle was registered as a goods carriage vehicle to carry public goods. It is further contended that the appellant has first time approached with a case that the deceased was travelling in Metador along with goods. No such plea raised in his written statement nor any evidence adduced to that effect.

12. It is further pointed out that the claimants have examined Gulab Chavan - the husband of deceased who claimed to be

travelling along with deceased and their two children. He categorically deposed that on the date and time of the accident, he was travelling along with his wife and two children in vehicle from Pachod to Vihamandava and beside them, there were 7-8 other passengers travelling in that tempo i.e. the vehicle involved in the accident. He further deposed that beside his wife, children and other persons sustained injuries and they were treated in Government hospital. Beside his wife one other person travelling in said vehicle sustained injury and died on the spot. His wife become unconscious and succumbed to injuries sustained in that accident. It is contended that the respondent nos.1 and 2 have not cross-examined the said witness. They have not put up their case to witness. The respondent nos.1 and 2 not examined themselves to prove their case to prove that the deceased was travelling in said vehicle along with her goods carried in vehicle for the safety of goods under transportation. In this background, the learned counsel submits that there is absolutely no perversity in the reasons and findings recorded by the Tribunal. So as to call for interference with the reasons and findings recorded by the Tribunal in exercise of appellate jurisdiction of this Court.

13. In support of the submission that the risk of passengers carried in goods vehicle involved in accident the insurance company is not liable to pay the compensation, the learned counsel has referred and relied upon the decisions of the Apex Court in the case of ***National Insurance Co.Ltd. V/s Cholleti Bhartamma and others*** reported in ***(2008) 1 SCC 423, New India Assurance Co. Ltd., V/s Asha Rani and others*** reported in ***(2003) 2 SCC 223 and Oriental***

***Insurance Co. Ltd. V/s Devireddy Konda Reddy and others*** reported in ***(2003) 2 SCC 339.*** The learned counsel has further referred and relied upon the decision of the Apex Court in the case of ***New India Assurance Co. Ltd. V/s Vedwati and Ors*** reported in ***AIR 2007 SCC 1334(1).***

14. I have carefully considered the submissions advanced in the light of rival pleadings and oral and documentary evidence adduced in the case. In my opinion, there is absolutely no perversity in the reasons and findings recorded by the Tribunal to exonerate the respondent-insurance company. In the written statement filed, the respondent nos.1 and 2 have never taken plea to the effect that the deceased was travelling in vehicle in question along with goods i.e. Jawar bags for safety and carriage of goods under transportation. Neither any

pleadings nor any evidence adduced to that effect on the part of the respondent nos.1 and 2. Only during the course of submissions, the contention was raised that the deceased was travelling along with goods. In absence of the pleadings and evidence to that effect, the Tribunal has refused to accept the contention of the respondent nos.1 and 2 that the deceased was travelling in vehicle mean for carriage of goods for the safety of her goods i.e. Jawar bags. There is no iota of evidence to show that the deceased was carrying alleged goods in the vehicle when she with an accident. On the contrary, the first information report, the spot panchanama and the testimony of the witness for the claimants examined in the case spell out that the vehicle in question used for transportation/carriage of large number of passengers in contravention of terms of permit to ply the vehicle issued by the

R.T.O. and in contravention of provisions of Motor Vehicles Act and rules framed thereunder.

15. The claimants have examined Gulab Chavan (the claimant no.1) and husband of the deceased. Hehas deposed that on the day of accident he along with his wife and two children and 7-8 other persons were travelling in Metador/Jeep to reach to their village. He deposed that in the accident besides himself his wife and two children large number of passengers sustained injuries and one of such passenger died on spot. He has not deposed single word about the transportation of goods by his wife or any other person. In the first information report, it is mentioned that 17-18 passengers travelling in goods vehicle sustained injuries, who were travelling as passenger in the vehicle. The copy of vehicle Permit

produced on record as Exhibit-35 specify that the vehicle was carrying goods carriage permit for transportation of public goods. The registration certificate of vehicle produced as Exhibit-37 establishes that the vehicle in question registered for carriage of public goods. Thus the evidence on record is more than sufficient to establish that the deceased and other persons were travelling in the offending vehicle in contravention of the terms of permit issued by the Regional Transport Authority as well as breach of the terms and conditions of the policy.

16. The policy issued by the respondent no.3 has not covered the single of passenger carried in the goods vehicle. The policy issued by the respondent no.3 only provides for third party risk. The risk of the passengers/occupants travelling in offending vehicle not covered under the terms of the

policy. Therefore, the respondent no.3 not liable to indemnify the insured. In that view, the Tribunal fully justified in dismissing the Petition against the respondent no.3.

17. The reasons and findings recorded by the Tribunal to exonerate respondent no.3 reads as under :-

> *"15. In the claim petition, claimant has not pleaded that deceased was travelling by that vehicle, along with the goods or there were goods with the claimant while they travel by this vehicle. If we go through (Exhibit 27), police statement of witness Premchand Pawar, he hs no where stated in his statement at the relevant time passengers from that vehicle was travelling with the goods as mentioned by the claimant in cross examination. Claimant no.1 himself is victim of this accident, who himself*

*have experience, witnessed this incident. He stated, from Pachod hospital he was referred to Ghati Hospital, Aurangabad as his condition was serious, in that circumstances police may have recorded his statement and if he was travelling with the goods, he was expected to tell that fact before the Police. No such statement is on record or statement of any other person is brought on record. In the examination in chief claimant has not stated that he was going with the goods. Even it is held for some time that the claimant no.1 was travelling with the goods, then question rises whether deceased was travelling with the goods or whether she will be supposed to travel by that vehicle with the goods with the claimant no.1 and how many passengers can travel with one luggage. Claimant has tried to bring the case as if with two bags of Jawar these four persons were travelling. It is admitted, deceased and claimant were not going to their own home but were going to visit somebody else,* *may be their relatives. Statement of Premchnd Pawar show at the relevant time 25 to 30 persons were travelling by that vehicle as fare paying passengers. It is admitted, this vehicle is goods career. Claimant has tried to state, there were 7 to 8 persons with them, but statement of Premchand (Exh.27) go to speak about 25 to 30 persons in that vehicle. It show, claimant has tried to speak lie about the number of persons in that vehicle. By this accident 17 to 18 persons got injured, two died, it also go to show that number of persons travelling in that vehicle claimants advocate reply on (i) AIR 1982 Karnataka-30 (Basappa and another V/s. K. Sreenivas Reddy and others) and (ii) A.I.R. 1977 Supreme Court 1158) Smt. Manjushri Raha and others Etc V/s B.L. Gupta and others etc.). Discussion about the view taken in these authorities is already discussed above. Carrying of passengers by this vehicle and risk was not certainly insured with the respondent no.3. In my view claimants*

> *failed to prove at the relevant time claimants and deceased were travelling by this vehicle with goods and not as a passengers, so respondent no.3 can not be held responsible, liable to pay the above decided amount of compensation."*

18. The reasons and findings recorded by the Tribunal are well reasoned and suffers from no perversity. In absence of any perversity, the findings on facts recorded by the Tribunal calls for no interference in exercise of appellate jurisdiction. In that view, the appeal filed by the appellant is devoid of merits.

19. In the case of ***National Insurance Co. Ltd V/s Cholleti Bharatamma (supra),*** the Apex Court has ruled that the Motor Vehicles Act does not contemplate the goods carriage vehicle shall carry a large number of passengers with a small percentage of goods

as the insurance policy considerably covers the death or injuries either of the owner of the goods or his authorized representative. The provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle and the insurers would not be liable therefor. It is further observed that the words “injury to any person” referred in Section 147(1)(b) of the Motor Vehicles Act would only means third party and not a passenger travelling in a goods carriage whether gratuitous or otherwise. So also the policy covers the liability of owner or representative of the owner of the goods carried in the vehicle for the safety of goods carried in vehicle confines to such owner of goods under transportation or his representative actually travelling in Cabin of the goods vehicle and not otherwise.

20. Similarly in the case of ***New India Assurance Co. Ltd., V/s Asha Rani and others (supra),*** the Apex Court has considered the purport of Section 147 of the Motor Vehicles Act, 1988 and in para nos.25 and 26 observed as under :-

> *"25. Section 147 of the 1988 Act, inter alia, prescribes compulsory coverage against the death of or bodily injury to any passenger of "public service vehicle". Proviso appended thereto categorically states that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in a goods vehicle would be limited to the liability under the Workmen's Compensation Act. It does not speak of any passenger in a "goods carriage".*
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> *26. In view of the changes in*

*the relevant provisions in the 1988 Act vis-a-vis the 1939 Act, we are of the opinion that the meaning of the words "any person" must also be attributed having regard to the context in which they have been used i.e. "a third party". Keeping in view the provisions of the 1988 Act, we are of the opinion that as the provisions thereof do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefor."*

21. In the result, the appeal preferred by the appellant deserves to be dismissed as devoid of merit. Accordingly, the appeal is dismissed with no order as to costs.

**[V.L.ACHLIYA]**
**JUDGE**

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