IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 109 OF 2007
WITH
CIVIL APPLICATION NO.936 OF 2007

Anandsingh Gopalsingh Chandel,
Age : 28 years, Occ. Transport Business,
r/o. Kombadiwala Mala, Bhingar Camp,
Solapur Road, Ahmednagar ..Appellant

Vs.

1. Shantabai w/o. Raosaheb Wagh,
Age : 25 years, Occ. Household,

2. Kum. Jyoti Raosaheb Wagh,
Age : 12 years, Occ. Nil,
(U/g. respondent no.1)

3. Maruti Babu Wagh,
Age : 69 years, Occ. Nil,
All Nos.1 to 3 r/o. Narayandoh,
Tq. Nagar, Dist. Ahmednagar

4. The Branch Manager,
The United India Insurance Co. Ltd.,
Kisan Kranti Building, Station Road,
Market Yard, Ahmednagar

Mr.Madhaveshwari D. Thube-Mhase, Advocate for appellant
Mr.S.V.Kulkarni, Advocate for respondent no.4

CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 15, 2021

JUDGMENT :-

This appeal is filed by the owner of the offending vehicle taking exception to the clause in the impugned award dated

10.10.2006 directing the respondent-insurance company to pay the amount of compensation to the claimants and then recover the same from the appellant herein.

2. It so happened that the dumper bearing registration no. MH-17-C-6720 met with accident on 13.12.2000. The deceased Raosaheb was travelling in the said dumper ostensibly as a labour working on the very vehicle. He died as a result of the injuries suffered in the very accident. His legal representatives, therefore, preferred the claim petition for compensation. The Tribunal allowed the petition granting compensation of Rs.3,72,000/- with interest at the rate of 9% per annum. The Tribunal, however, held that the policy of insurance of the dumper did not cover the risk of the deceased. The Tribunal, therefore, directed the insurance company, respondent no.4 herein, to pay the amount of compensation and then recover the same from the dumper owner (appellant herein).

3. Heard learned counsel for the parties.

4. Mrs.M.D.Thube, learned counsel for the appellant-owner of the vehicle involved in the accident, would submit that a sum of Rs.288/- was paid to the respondent-insurance company towards

premium to cover the risk of the employees/labourers engaged on the dumper. She took me through the policy of insurance to ultimately submit that since the risk of the deceased had already been covered, the direction given by the Tribunal to recover the amount of compensation from the appellant is required to be set aside.

5. The Tribunal, in paragraph 15 of the impugned order has observed thus :-

> *"**15**. The learned counsel of the applicants has not pointed out that really the risk of labourers has been covered under the insurance policy of the vehicle. Ex.37 is the certificate of the insurance policy of the vehicle involved in the accident in which there is no mention about the cover and risk of the labourers. I have gone through the contents of Ex.37 and I am satisfied that really the risk of labourers or passengers has not been covered under the insurance policy of the vehicle by which the insurance company is not liable to pay the compensation amount to the petitioners."*

6. On perusal of the policy of insurance, I have not come across any clause covering the risk of the employees/labourers travelling in the vehicle. The submission made by learned counsel for the appellant that a sum of Rs.288/- has been paid to cover the risk of the employees of the appellant, is stated to be negated since

the said amount is shown to have been charged towards 5% service tax. Learned counsel for the appellant-insurance company has conveniently kept mum in this regard. It is reiterated that the certificate of insurance (Exh.37) does not indicate the risk of a labourer/employee working on the dumper to have been covered. Clause 19 appearing in the terms and conditions of the policy of insurance reads as under:-

> "IMT 19. Legal liability to paid driver employed in connection with the operation on Motor Vehicle (Taxi, Auto-Rickshaw)
>
> In consideration of the payment of an additional premium it is hereby understood and agreed that notwithstanding anything contained herein to the contrary the Company shall indemnify the Insured against his legal liability under. The Workmen's Compensation Act, 1923 and subsequent amendments of that Act prior to the date of this endorsement, the Fatal Accidents Act, 1855 or at Common Law in respect of personal injury to paid driver whilst engaged in the service of the insured in such occupation in connection with the motor vehicle and will in addition be responsible for all costs and expenses incurred with its written consent.
>
> The premium having been calculated and paid while taking insurance of the vehicle concerned at the rate of Rs.15/- for driver and/or conductor."

7. Since the appellant has failed to show the risk of his employees/labourers working on the dumper to have been covered

under the policy of insurance and that he paid premium therefor, no fault can be found with the impugned direction.

8. In the result, the appeal fails and is dismissed.

9. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

10. Pending Civil application stands disposed of.

[**R.G. AVACHAT, J.**]

KBP