

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

**FIRST APPEAL NO. 479 OF 2015**

M/s New India Assurance Co. Ltd.  
Having it's Head and Regd. Office at  
87 New india Assurance Building,  
Fort – Mumbai 400 001 and Branch at  
Latur – 431 401 through Senior  
Divisional Manager,  
M/s New India Assurance Co. Ltd.,  
Adalat Road, Ajay Engg. Compound, Aurangabad  
Mr. Vishwas Bansi Gaikwad aged about 52 Yrs      **... Appellant**  
[Orig.Resp.No.2]

**Versus**

1.    Bhagubai w/o Tukaram Margal age 55 years
2.    Tukaram s/o Keru Margal age 60 Years
3.    Surekha w/o Bandu Margal age 22 Years
4.    Shobha d/o Tukaram Margal age 18 Years
5.    Sanjay s/o Tukaram Margal age 23 Years
6.    Ambadas s/o Tukaram Margal age 14 Years,  
Minir U/g of mother Bhagubai w/o Tukaram  
Margal Claimant No.1

All agriculturists by Occupation and  
R/o Takli Ambad, Tq. Paithan,  
Dist. Aurangabad      **[Orig.Claimants  
No. 1 to 6]**

7.    Saikh Rajjak Ahmed age major  
Occ. Business R/o Kasba Sukane      **[Orig.Respondent No.1]**  
Tq. Niphad Dist. Nashik      **... Respondents**

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Mr. V. N. Upadhye, Advocate for appellant

Mr. R. G. Hange, Advocate for respondent Nos. 1 to 6

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**CORAM : R. G. AVACHAT, J.**

**DATED : 25<sup>th</sup> NOVEMBER, 2021**

**PER COURT :-**

. Heard.

2. This is an Insurance Company's appeal, taking exception to the judgment and award dated 06.02.2009, passed by the Member, Motor Accident Claims Tribunal, Beed in Motor Accident Claim No.148 of 2005, granting compensation of Rs. 4,00,000/- with condition to the appellant - Insurance Company to pay the amount of compensation and recover the same from the owner of vehicle involved in the accident.

3. FACTS:-

A goods carriage, namely a truck bearing registration No. MH-15-G-2827 met with the accident on 03.01.2001. The deceased was said to have been travelling from the ill-fated truck. As a result of the injuries suffered therein, he died. His legal representatives, therefore, preferred petition for compensation. It has

specifically been averred in para 5 of the petition that deceased was travelling in the truck along with his household articles - firewood, wooden logs, jawar bags, etc. As such, it is the case of claimants that the deceased was travelling along with his goods in the truck.

4. Learned Advocate for the appellant – Insurance Company would, however submit that more than seven persons were travelling in the truck as gratuitous passengers. Learned Advocate relied on Rule 108 of the Maharashtra Motor Vehicles Rules to submit that household goods are not covered by the definition of goods given in the Motor Vehicles Act. According to him, it was an ‘act only policy’ and therefore, a risk of gratuitous passenger travelling in the goods vehicle has not been covered thereunder. According to the learned Advocate, the Tribunal in the facts and circumstances of the case, ought not to have passed order to first pay the amount of compensation and recover the same from the owner of the truck.

5. The learned Advocate for the appellant – Insurance Company relied on the judgment of this Court, delivered on 28.10.2021 in First Appeal No.2820 of 2017, wherein this Court took

a view that a person travelling in a goods vehicle as gratuitous passenger will not be entitled to claim compensation in respect of injuries or death occurred as a result of the very vehicle involved in the accident, which has insurance cover in the nature of 'act only policy'.

6. Learned Advocate for the respondents – claimants would, on the other hand, submit that since it was a goods carriage vehicle and the deceased was travelling as owner of the goods carried therein, his risk has been covered by virtue of Section 147 of the Motor Vehicles Act.

7. The owner is not in appeal. The averments in the claim petition suggest that the deceased was travelling with his household articles, described herein above. It is true that more than 3 – 4 persons were travelling in the truck. They were the sugarcane harvesters. The papers on record indicate that they were returning from Niphad sugar factory and proceeding towards Vaidyanath Sugar Factory. One may take a judicial notice of the fact that the sugarcane harvesters stay more than eight months a year out of their permanent place of residence. They carry with them almost all their

belongings and articles of day to day use. Therefore only, the goods described herein above were found in the truck that met with the accident. As such, the deceased was travelling with his goods. The Tribunal has passed the order directing the appellant – Insurance Company to pay and recover the amount of compensation. The quantum of compensation appears to be not on higher side. There is also no quarrel on quantum of compensation. The owner of the truck is not in appeal. It was a death claim. In the facts and circumstances of the case, the Court is not inclined to interfere with the impugned judgment and award.

8. It is informed that there is one more claim arising out of the very accident. The same is a death claim. (All the points or objections shall be open for the appellant – Insurance Company to raise the same in that appeal since it is a question whether in goods vehicle more than 2 – 3 persons can travel as owners of the goods carried therein). The appellant – Insurance Company shall be at liberty to raise all the grounds, in that appeal.

9. The appeal therefore stands dismissed.

10. The amount in deposit, be paid to the respondents – claimants along with interest accrued thereon.

11. The amount in deposit be transferred to the Tribunal, Beed for being paid to the claimants, there.

12. In view of disposal of first appeal, Civil Application No.6687 of 2020 stands disposed of.

[ R. G. AVACHAT, J. ]

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