

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

FIRST APPEAL NO. 1608 OF 2020

Bajaj Allianz General Insurance Company Limited
Through its Branch Manager,
Branch Office, Nagpur, Dist. Nagpur

Through its Authorized Signatory/Branch Manager,
ABC Complex, MIDC Chikalthana,
Near Prozone Mall, Aurangabad,
Tq. & Dist. Aurangabad – 431 001

... Appellant
(Orig. Respondent No.2)

VERSUS

1. Vandana w/O Rahul Kamble
Age: 28 YEARS, Occu: Labour,
2. Shidhart S/O Rahul Kamble
Age: 10 years, Occu. Education,
(Being minor u/g of his mother i.e.
Respondent No.1)
3. Bhiwaji s/o Khanaji Kamble
Age: 54 years, Occu. Labour,
4. Kantabai W/o Bhiwaji Kamble
Age: 49 years, Occu. Labour,

All R/o. Pardi, Tq. Kalamnuri,
Dist. Hingoli

5. Anil S/o Bhimrao Dhone
Age: 44 years, Occu. Business,
R/o Isapur 9Dam), Tq. Pusad,
Dist. Yewatmal

... Respondents
(Respdt. Nos. 1 to 5 – Org. Claimants
Respdt. No.5 – Org. Respdt.No.1)

....
Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. Manjit S. Shaikh, Advocate for respondent Nos. 1 to 4
Mr. Sachin S. Deshmukh, Advocate for respondent No.5
....

**AND
FIRST APPEAL NO. 1616 OF 2020**

Bajaj Allianz General Insurance Company Limited
Through its Branch Manager,
Branch Office, Nagpur, Dist. Nagpur

Through its Authorized Signatory/Branch Manager,
ABC Complex, MIDC Chikalthana,
Near Prozone Mall, Aurangabad,
Tq. & Dist. Aurangabad – 431 001

... Appellant
(Orig. Respondent No.2)

VERSUS

1. Kailas S/o Narayan Aawate
Age: 40 years, Occu: Labour,
R/o. Killewadgaon, Tq. Kalamnur,
Dist. Hingoli

2. Anil S/o Bhimrao Dhone
Age: 44 Years, Occu. Business,
R/o. Isapur (Dam), Tq. Pusad,
Dist. Yewatmal

... Respondents
(Respdt. No.1 – Org. Claimant
Respdt. No.2 – Org. Respdt. No.1)

....
Mr. S. G. Chapalgaonkar, Advocate for appellant
Mr. Manjit S. Shaikh, Advocate for respondent No. 1
Mr. Sachin S. Deshmukh, Advocate for respondent No.2
....

CORAM : R. G. AVACHAT, J.

RESERVED ON : 09th SEPTEMBER, 2021

PRONOUNCED ON : 23rd DECEMBER, 2021

J U D G M E N T :-

. Both these appeals are being decided by this common judgment, since these appeals arise out of the judgment and award passed in Motor Accident Claim Petitions arising out of one and the same accident. Both the appeals have been preferred by the Insurance Company of trolley, allegedly involved in the accident.

. First Appeal No. 1608 of 2020 is arising out of the judgment and award dated 18.01.2020, passed by the Member, Motor Accident Claims Tribunal, Hingoli, in Motor Accident Claim Petition No.43 of 2011, granting compensation of Rs. 9,77,200/- (Rupees Nine Lakh Seventy Seven Thousand Two Hundred Only) on account of death, while the award under challenge in First Appeal No. 1616 of 2020 has been passed by the very Member, in Motor Accident Claim Petition No. 88 of 2011, granting compensation of Rs.61,700/- (Rupees Sixty One Thousand Seven Hundred Only) on account of injuries and disability suffered.

3. For the sake of convenience, the evidence in M.A.C.P No.43 of 2011 is referred to.

4. Facts giving rise to the present appeals are as follows:-

Deceased Rahul, along with his brother-in-law Kailas, was on his way from Chinchordi to Killewadgaon on motorbike bearing registration No. MH-38/K-6173. He was riding the same. His brother-in-law Kailas was the pillion rider. When the motorbike was passing along Pardi to Chinchordi road by 7.30 p.m., a tractor bearing registration No. MH-29/R-8973 with trolley attached thereto (MH-29/R-8928), came from opposite side. The tractor dashed against the motorbike. Both, Rahul and Kailas fell off and suffered multiple injuries. Rahul died on the next day. His father, therefore, lodged the report of the accident. His legal representatives and the injured Kailas, filed two separate claim petitions for compensation. The Tribunal allowed both the petitions as stated above.

5. Learned Advocate for the appellant – Insurance Company would submit that the accident took place on 05.03.2011. The First Information Report (FIR) was lodged four days thereafter.

The father of the deceased gave a statement that an unknown vehicle dashed against the motorbike. According to the learned Advocate, it is a case of false implication of the tractor. He would further submit that although the tractor and trolley were owned by respondent No.5 (Anil Bhimrao Dhone), the tractor did not have insurance cover when it met with the accident. The learned Advocate invited this Court's attention to the definition of tractor and trolley given in Motor Vehicles Act. According to him, trolley is not self-propelled vehicle. It needs to be towed by any other vehicle. It was a head on collision between motorbike and the tractor. The trolley was in no way involved in the accident. The award, therefore, ought to have been passed against the owner of the tractor. According to the learned Advocate, unless the tractor was insured, the insurer of the trolley has no liability to pay. He would further submit that the driver of the tractor was not party to the claim petition. Since it was a petition under Section 166 of the Motor Vehicles Act, negligence on the part of the tractor driver ought to have been a matter, directly and substantially in issue. The driver thereof, therefore, should have been a party to the claim petition. According to the learned Advocate, notice under Rule 260 of the

Maharashtra Motor Vehicles Act to the owner, driver and insurer of the tractor was a must. There is failure to comply with the said rule. The tractor driver was also said to have no valid and effective driving licence to drive the same at the relevant time. The learned Advocate, ultimately, urged for setting aside the impugned awards.

6. Learned Advocate for the respondents – claimants would, on the other hand, support the impugned awards.

7. Considered the submissions advanced. Perused the evidence relied on. Gone through the impugned awards and authorities relied on.

Deceased Rahul, along with his brother-in-law Kailas, was on his way to their village Killewadgaon on the motorbike. It was 05.03.2011. By 7.30 p.m., they were passing along Pardi Chinchordi road. The tractor attached with the trolley was said to have knocked down the duo. Both, Rahul and Kailas suffered multiple injuries. They were rushed to the hospitals. Rahul, however, succumbed to the injuries on 06.03.2011. True, his father lodged the report of the accident on 09.03.2011, wherein he stated that one unknown vehicle hit the motorbike. The Tribunal, on appreciating

the evidence, has rightly observed that the father of the deceased was not in a mental frame on account of grief of demise of his son. Moreover, he (father) had not witnessed the accident. It was, therefore, but reasonable for him not to make mention of the tractor. The owner of the tractor did not file his written statement. On due investigation, the tractor driver was proceeded against by filing charge-sheet. Moreover, it does appear that involvement of the tractor has not been seriously disputed before the Tribunal. Close reading of the affidavit of evidence filed by the official of the appellant – Insurance Company, vouch for the same. The affidavit of evidence contained no denial of the involvement of the tractor with trolley attached thereto.

8. The claimant in another claim, was an eye witness to the accident, being a victim thereof. On appreciating the evidence in the case, the Tribunal has rightly come to the conclusion as to involvement of the tractor with the attached trolley. This Court sees no reason to interfere therewith.

9. Sections 2(44) and 2(46) of the Motor Vehicles Act, read thus:-

“2(44) “tractor” means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion); but excludes a road-roller;

2(46) “trailer” means any vehicle, other than a semi-trailer and a side-car, drawn or intended to be drawn by a motor vehicle.”

10. Admittedly, both, tractor and trailer are required to be registered independently. The trailer itself is not a self-propelled vehicle. When it is being towed by the tractor, it becomes part of the same as one vehicle, namely tractor. The learned Advocate for the appellant – Insurance Company, therefore, could not be heard to say that it was head on collision between the motorbike and the tractor head, and as such the trailer was no way involved in the accident.

11. Admittedly, both, the tractor and trailer were owned by respondent No.5 herein. The tractor had no insurance cover at the relevant time. The trolley had. Close reading of the written statement filed by the appellant – Insurance Company and even the appeal memos would undoubtedly suggest it to have failed to take defence of it being a case of breach of terms and conditions of policy of insurance, particularly the term that the insurer of the tractor shall have liability only in case the tractor has an insurance cover.

12. So far as the issue of non impleadment of the driver of the tractor and want of compliance of Rule 260 of the Maharashtra Motor Vehicle Rules is concerned, it is to be stated that there was no whisper in the written statement as regards failure to comply with Rule 260. Moreover, in the appeal memo, no challenge to the impugned award has been made on both these grounds. The points raised for the first time in the oral submissions sans permission of this Court, are therefore not addressed to. There is also nothing to suggest that prejudice has been caused to the appellant – Insurance Company due to non compliance of Rule 260. On the question of validity of the driving licence of the driver of the tractor, it is to be stated that the issue is no longer *res-integra* in view of the Apex Court judgment in the case of ***Mukund Dewagan vs Oriental Insurance Company Limited – (2017) 14 SCC 663***. This issue, therefore, was not seriously raised before this Court.

13. All in all, there is no reason for this Court to interfere with the impugned awards.

14. In the result, the appeals fail. The same are dismissed.

15. The amount of compensation in deposit, be paid to the respective claimants with interest accrued thereon, immediately.

16. Civil Applications No.7605 of 2021 and 7578 of 2021 are disposed of.

[R. G. AVACHAT, J.]

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