

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

FIRST APPEAL NO. 858 OF 2009

M/s National Insurance Co. Ltd.
Having its registered and head office at 3,
Meddison Road Kolkatta, 700 071
Br. at Ambar Plaza, Nr. S.T. Stand, Ahmednagar
Divisional Office at Hazari Chambers,
Station Road, Aurangabad 431 005
Through its Divisional Manager & Constituted
Attorney Dr. Milind s/o Kishanrao Ranvir
age 51 Yrs

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

Versus

- 1] Smt. Alka Sunil More
Age: 28 years, Occ. Household
- 2] Kum. Ashvini Sunil More 5 yrs, Occu.Education
- 3] Kum. Krishna Sunil More, aged 2 yrs, Nil

No.2 and 3 Minors, u/g of No.1 above
All R/o Raghunath Mailiba Dushing
At Post Umbare Tq. Rahuri,
District Ahmednagar

- 4] Bhausahab Baburao Mahankal
age Major Occ. Business
R/o Deolali Pravara
Tq. Rahuri, Dist. Ahmednagar

... **Respondents**

....

Mr. V. N. Upadhye, Advocate for appellant
Mr. N. C. Garud, Advocate for respondent Nos. 1 to 3
Mr. Sandeep D. Munde, Advocate h/f Mr. R. R. Karpe, Advocate for
respondent No.4

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CORAM : R. G. AVACHAT, J.

DATED : 26th NOVEMBER, 2021

PER COURT :-

. This is Insurance Company's appeal, taking exception to the judgment and award dated 05.04.2008, granting compensation of Rs.66,000/- (excluding NFL amount) on account of death in vehicular accident.

2. The challenge is mainly on the ground of the deceased having been travelling as a gratuitous passenger in a goods carriage and therefore, there being no liability of the insurer (appellant) to pay any compensation.

3. It so happened that the deceased Sunil was travelling in a tempo bearing registration No. MH-17-A-6141 on 07.04.2004. His widow – Alka gave evidence claiming the deceased to have been working as a Cleaner on the tempo. The driver asked the deceased to see whether the goods kept above the tempo were intact or not. It was the running tempo. The deceased therefore raised his head out of the window. His head hit with a branch of road side tree. The deceased suffered fatal injuries and died.

4. On due investigation, the First Information Report (F.I.R.) was lodged, wherein it has been mentioned that the deceased was travelling in an ill-fated tempo for worship the goddess Vedubai @ Banna. The Tribunal, on appreciating the evidence found the deceased to have been travelling as a passenger in a goods carriage. The same is the case averred in the F.I.R. The policy of the insurance indicates that on risk of such passenger was covered.

5. The learned Advocate for the appellant – Insurance Company was right in submitting that the appellant – Insurance Company has no liability to pay the respondents – claimants any amount of compensation, since the deceased was travelling as gratuitous passenger in goods vehicle. This Court is very much with the learned Advocate for the appellant – Insurance Company on this point of submissions. The law is on his side.

6. Without appreciating factual matrix and legal aspects of the matter, this Court is not inclined to interfere with the impugned award, in the peculiar facts and circumstances of the case, mainly it being a death claim filed by a 28 years widow and minor children in

the age group of 2 and 5 years and the amount of compensation awarded being Rs.66,000/- only. The appeal is therefore, dismissed.

7. The amount in deposit, if any, with this Court or the Tribunal, be paid to the respondents – claimants along with interest accrued thereon, immediately.

8. In view of disposal of appeal, Civil application No. 2446 of 2014 stands disposed of.

[R. G. AVACHAT, J.]

SMS