

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.284 OF 2009

The New India Assurance Company Ltd.,
 through its Branch at Yeotmal,
 Taluka and Dist. Yeotmal,
 through the Regional Manager,
 The Regional Office,
 The New India Assurance Company Ltd.
 M.E.C.L. Building, Dr. Babasaheb Ambedkar
 Bhawan, Seminary Hills, Nagpur-440006.

.....APPELLANT

...V E R S U S...

1. Jyoti Wd/o Prakash Mohitkar,
 Aged about 31 years, Occ: Labourer,

Deleted as per
Court's order
dated 17.8.2021

2. ~~Madhukar Sambhaji Mohitkar,~~
~~Aged about 58 years, Occ: Labourer,~~

3. Sau. Parvatabai Madhukar Mohitkar,
 Aged about 53 years, Occ: Labourer,
 The respondent nos.1 to 3 all are
 R/o Purad (Nerad), Taluka Zarizamni,
 Dist. Yeotmal.

4. Ambadas Haribhau Umare,
 Aged Major, Occ: Agriculturist and owner
 of the Tractor, R/o Zarizamni,
 Dist. Yeotmal.

... RESPONDENTS

 Shri A.J. Pophaly, Advocate for appellant.
 Ms Trishala Dhait, Advocate h/f Shri Abhay Sambre, Advocate for respondent nos.1 to 3.

CORAM:- PUSHPA V. GANEDIWALA, J.
DATED :- 17th AUGUST, 2021.

ORAL JUDGMENT :

. Heard.

2. The appellant-Insurance Company takes exception to the judgment and award dated 03.12.2008 passed by learned Member, Motor Accident Claims Tribunal, Yavatmal in Motor Accident Claim Petition No.267 of 2000 whereby the learned Tribunal directed the owner and insurer of the offending vehicle to pay jointly and severally the compensation amount of Rs.2,51,200/- with interest at the rate of 9% per annum from the date of application i.e. from 31.07.2000 till the date of payment.

3. I have heard Shri A.J. Pophaly, learned counsel appearing for the appellant-Insurance Company and Ms Trishala Dhait, learned counsel holding for Shri Abhay Sambre, learned counsel for respondent nos.1 to 3. The name of respondent no.2 – Madhukar Mohitkar came to be deleted since he is dead .

4. Shri A.J. Pophaly, learned counsel argued only on the aspect of breach of terms and conditions of the insurance policy. Learned counsel states that insurance policy does not cover the insurance of any person other than driver of the vehicle. It is stated that deceased was unauthorizedly sitting

on the mudguard of the tractor and therefore insurance company is not liable to the compensation, it being fundamental breach of the terms and conditions of the insurance policy. Learned counsel placed reliance on the judgment passed by the Co-ordinate Bench of this Court in the case of **Iffco Tokio General Insurance Co. Ltd. Vs. Tulsidas s/o Gangaji Nikode and others** passed in **First Appeal No.1389 of 2013** decided on 13.01.2016.

5. On the contrary, the learned Counsel Ms. Trishala Dhait appearing on behalf of the claimants supported the impugned judgment and award of the Tribunal.

6. I have considered the submissions advanced on behalf of both parties and also perused the record with the assistance of Shri Pophaly, learned counsel. The following short question arose for the determination of this Court:

“Whether the appellant-Insurance Company is liable to pay compensation to the legal heirs of deceased, who was travelling in the tractor having registration No. MH-29/C-3064 on 13.04.2000 ?”

7. It is the case of the claimants that on 13.04.2000 when deceased Prakash Mohitkar was on the way Kayar to Purad travelling on the mudguard of the tractor bearing No. MH-29/C-3064, the deceased fell down and died on the spot. The claimants claimed compensation to the tune of Rs.3,00,000/-. In response, owner and appellant-Insurance Company filed their written statements. The owner admits existence of contract of insurance company during the relevant period i.e. from 29.10.1999 to 28.10.2000, however, disputes willful breach of any of the conditions on his part. On the other hand, in its written statement insurance company admits the contract of insurance i.e. 'Farmer Package Policy', however pleaded that as per policy the vehicle was to be used only for the agricultural purposes and no other person was authorised to sit in the vehicle except the driver. It is the stand of the insurance company that the owner has committed fundamental breach of policy by permitting the deceased to travel in the offending vehicle.

8. The learned Tribunal framed necessary issues. In support of the claim, wife of the deceased i.e. claimant No.1 examined herself at Exhibit 34. The tenor of her cross-

examination is only with regard to the earning capacity of the deceased. Admittedly, she was not an eye witness to the accident. The owner of the offending vehicle examined himself at Exhibit-34 and brought on record the police papers, which includes F.I.R., Spot Panchanama, Inquest Panchanama, Postmortem report and insurance cover note (Exhibits 36 to 40), while insurance company preferred not to examine any witness.

9. First and foremost, there is no dispute that the deceased died in the accident dated 13.04.2000 wherein tractor bearing registration No.MH-29/C-3064 was involved for which there was contract of insurance between the owner and appellant-Insurance Company. The owner of the offending vehicle says that it was a comprehensive policy. The appellant-Insurance Company also does not dispute validity of the contract of insurance policy at the relevant time and in its written statement admits that it was a 'Farmer Package Policy'. It is also not disputed that at the relevant time the tractor was being used for agricultural purposes. It is also not disputed that the deceased was sitting on the mudguard of the tractor at the relevant time. Perusal of the evidence on

record would at once show that the claimants have discharged the initial burden by establishing that the death of deceased was due to motor accident involving aforesaid tractor, which was insured with appellant-Insurance Company. Now, the onus to prove that the contract of insurance does not cover the insurance for any other person than the driver of the tractor is on the appellant-Insurance Company. The appellant-Insurance Company has failed to bring on record the policy document in support of its stand. From the pleadings of the insured and the insurer, the nature of insurance policy for the offending vehicle i.e. 'Farmer Package Policy' is an admitted fact on record. In the absence of terms and conditions of the policy on record, it would be difficult to examine whether there was a breach of conditions in the policy.

10. In this context, the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. New Delhi Vs. Jugal Kishore And Others**, reported in (1988) 1 SCC 626 expressed disapproval against the conduct of the Insurance Company, and observed that in all such cases where the Insurance Company concerned wishes to take a defence in a Claim

Petition that its liability is not in excess of the statutory liability it should file a copy of the Insurance Policy along with its defence. For ready reference, the relevant para, i.e., para 10 of the said judgment is reproduced below :

“10. Before parting with the case, we consider it necessary to refer to the attitude often adopted by the Insurance Companies, as was adopted even in this case, of not filing a copy of the policy before the Tribunal and even before the High Court in appeal. In this connection what is of significance is that the claimants for compensation under the Act are invariably not possessed of either the policy or a copy thereof. This Court has consistently emphasised that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof. This duty is greater in the case of instrumentalities of the State such as the appellant who are under an obligation to act fairly. In many cases even the owner of the vehicle for reasons known to him does not choose to produce the policy or a copy thereof. We accordingly wish to emphasise that in all such cases where the Insurance Company concerned wishes to take a defence in a claim petition that its liability is not in excess of the statutory liability it should file a copy of the insurance policy along with its defence. Even in the instant case had it been done so at the appropriate stage necessity of approaching this Court in civil appeal would in all probability have been avoided. Filing a copy of the policy, therefore, not only cuts short

avoidable litigation but also helps the Court in doing justice between the parties. The obligation on the part of the State or its instrumentalities to act fairly can never be over-emphasised.”

11. The ratio as laid down in the case of **Jugal Kishore** (*supra*) has further been referred to by the High Court of Judicature At Patna, Ranchi Bench in the case of **Dilip Kumar Saha Vs. Runnu Sarkar and another**, reported in 1995 ACJ 353, wherein in para 6, it has been held as under :

“6. On hearing the rival contentions, I am constrained to observe that in this case the insurance company is trying to defeat the claim of an insured policy holder by pleading procedural technicalities and withholding the primary document like the insurance policy and thereby dragging genuine claimants into prolonged, unwarranted and multiple litigation. It seems that the officers functioning the insurance companies have taken the frivolous litigations as a part of their official duties and they seem to be deriving some pleasure in adopting such process, causing harassment and inconvenience to public having least care about wasteful expenditures of public money involved in such litigations and wastage of court hours which needs to be consumed in more fruitful pursuits. In recent times this tendency of the insurance companies has been repeatedly deprecated by several High Courts as also the Supreme Court as is evident from the observation of the Apex Court in the case of National Insurance Co. Ltd. v. Jugal Kishore, 1988 ACJ 270 (SC) XXXX”

12. In view of the above, it is necessary to take an adverse inference against the insurance company for not producing the same on record.

13. In the light of above discussion, the learned Tribunal has rightly held that the insurance company is liable to pay the compensation jointly and severally along with owner of the offending vehicle.

14. With regard to the judgment in the case of **Iffco Tokio** (supra) relied on by Shri Pophaly, learned counsel for the appellant, this Court is of the view that the said judgment is of no assistance to the learned counsel as it is distinguishable on facts. In that case, deceased was travelling in the trolley attached to the tractor and the question before the Court was that the trolley was not insured and the risk of the deceased was not covered by the policy produced on record. In that case, the Court held that cover note does not cover risk of more than one person in the vehicle. In the instant case, the learned counsel for the appellant could not point out from Exhibit – 35 i.e. cover note of the policy, any condition like this.

15. The learned Tribunal has rightly held that the insurance company has failed to lead any evidence to rebut the evidence of the claimants and therefore it can be safely concluded that the deceased traveled as owner of goods. It is further rightly held that the insurance company failed to prove the breach of terms and conditions of insurance policy. I do not find any error in the impugned judgment warranting any interference. Learned Tribunal has rightly appreciated the evidence on record in its proper perspective. There is no scope for any interference in the well reasoned judgment of the learned Tribunal. Consequently, the appeal stands **dismissed**. No order as to costs.

JUDGE

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