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

FIRST APPEAL NO.724 OF 2010

The Oriental Insurance Co. Ltd.,
Yavatmal, Division Office Amravati.
Through :Its the T.P.HUB Incharge,
Shukla Bhawan, W.H.C. Road, Nagpur ..**APPELLANT**

Versus

1. Rehanabi w/o Mastankha Pathan,
age about 40 years, Occ. Household work,

2. Mastankha S/o Ajijkha Pathan,
Age about 45 years, Occ. Labourer,

Both r/o Ward no.1, Islampura, Ladkhed,
Po.Tq.Darwha, District Yavatmal.

3. Gajanan s/o Bhaurao Dudhe,
age about 38 years, Occ. Tractor driver,
Tq. Darwha, District Yavatmal.

4. Namdeo s/o Tukaram Chavhan,(deleted)
LRs. of respondent no.4 (died)

4(a) Smt. Darkabai wd/o Namdeo Chavhan,
age Major, Occupation not known.

4(b) Shri Anil s/o Namdeo Chavhan,
age Major, Occupation not known.

4(c) Prashant s/o Namdeo Chavhan,
age Major, Occupation not known.

4(d) Sandeep s/o Namdeo Chavhan,
age Major, Occupation not known.

4(e) Sudendra @ Khanna s/o Namdeo Chavhan,
age Major, Occupation not known.

All now r/o Ward No.2, Tathagat Nagar,
Near Police Station/Quarter :Ladkhed,
Tah. Darwha, Distt. Yavatmal. . ..**RESPONDENTS**

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Shri A.W. Paunikar, Advocate for the appellant.
Shri B.D.Vora, Advocate for the respondent nos.1 and 2.
None for other respondents.

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CORAM : PUSHPA V. GANEDIWALA, J
DATED : AUGUST 4, 2021.

ORAL JUDGMENT :

1. The appellant - Insurance Company takes exception to the judgment and award dated 22.2.2010 in MACP Case No.68 of 2008 passed by the Motor Accident Claims Tribunal, Darwha, whereby the appellant is directed to pay amount of compensation of Rs.2,94,000/- alongwith interest @ 9% per annum to the claimants and recover the same from owner and driver of the offending vehicle i.e. Tractor bearing Registration No.MH-29-C-3415, being jointly and severally liable to pay the compensation.

2. The only issue involved in this appeal is with regard to the directions to the appellant for “Pay and Recover”.

3. Respondent nos.3 – the driver and respondent no.4 – the owner of the vehicle, despite service of notice, preferred not to put in their appearance.

4. It is stated that on 7.5.2008, the deceased Salimkhan, aged 20 years, while sitting on the mudguard of the tractor bearing No. MH-29-C-3415, caused accidental death as the tractor turned turtle due to rash and negligent driving of the driver – respondent no.3 herein. The respondent Nos 1 and 2, the original claimants are the parents of the deceased.

5. The respondent no.4 – owner of the tractor was proceeded *ex parte* before the learned Tribunal.

6. The learned Tribunal framed necessary issues on the basis of pleadings of the rival parties and recorded evidence in support of the pleadings of the respective parties.

7. On the basis of oral as well as documentary evidence on record, the learned Tribunal recorded the finding that the deceased Salimkhan Mastan Khan Pathan died in motor vehicle accident on 7.5.2018 at 2.00 p.m. at Ladkhed

Shivar, due to rash and negligent driving of Tractor bearing MH-29-C-3415 by the driver – respondent no.3 herein. The learned Tribunal fixed the liability of payment of compensation upon the driver and the owner of the offending vehicle and absolved the appellant - Insurance Company, mainly on the ground that Rule No.28 of Rules of Road Regulations, 1949, a driver is prohibited to carry or allow any person to be carried on tractor. However, the Tribunal directed the appellant - Insurance Company first to pay the amount of compensation to the claimants and then to recover the same from the owner and driver of the offending vehicle.

8. As the owner - respondent no.4 did not challenge the aforesaid finding of the Tribunal, the only question arises for consideration of this Court is, whether the direction to the appellant - Insurance Company for payment of compensation to the claimants and then to recover the same from the owner and driver of the offending vehicle needs interference.

9. I have heard the learned counsel appearing for the respective parties.

10. Shri Pawnikar, learned counsel appearing for the appellant - Insurance Company placed reliance on the judgment of this Court in the case **New India Assurance Co.Ltd. Vs. Diwakar and others** reported in **2007 ACJ 215**, and submitted that in the said case, the Insurance Company was not made liable to pay the compensation first to claimant, as there is no statutory liability of the Insurance Company to insure the passengers travelling in a goods vehicle. In the said case, the deceased was sitting on the mudguard of tractor which was held to be a goods carrier and, therefore, the Insurance Company was not made liable to pay compensation to the respondents.

11. On the contrary, Shri Vora, learned counsel appearing for the Claimants - respondent nos.1 and 2 relied on the judgment of this Court in the case of **United India Insurance Co.Ltd. Vs. Sindhubai w/o Kondiram Darwante and others**, reported in **2010 (3) Mh.L.J 886** and submitted that this Court has held that there is a power vested in Tribunal, depending upon the facts and circumstances of each case, to direct the insurer to pay compensation amount and thereafter

to recover the same from the Insured.

In that case, the Court directed the Insurance Company to pay first and recover the same form the owner on the premise that the owner (insured) had chosen not to appear before the Tribunal and as he has not appeared before this Court though service has been effected and, therefore, this is a case where the claimants cannot be denied fruits of award and cannot be compelled to seek recovery of the amount from the owner.

12. In the case in hand, undisputely, the nature of Insurance Policy is “Kisan Package Insurance” Policy which is a comprehensive policy. The use of vehicle is shown as `Agricultural Tractor' and sitting capacity is mentioned as “seven” i.e. (1+6) and the coverage of insurance is for third party, owner - driver, paid driver, conductor and cleaner. The facts of the case are distinguishable from the facts in the case of *New India V/s Diwakar and others* (supra)

13. A bare perusal of the entire policy document, nowhere it reflects that the vehicle is insured as “Goods

Vehicle". On the contrary, it is shown as an "Agricultural Tractor" and coverage of insurance is not only for third party and owner - driver but also for conductor and cleaner.

14. Be that as it may, the fact remains that as the owner has not challenged the findings of the Tribunal and, therefore, without going into the question as to whether the owner is liable to pay compensation or not, at least a direction which is given to the Insurance Company to pay first to the claimants and then to recover the said amount needs no interference. Furthermore, in this case also, as in the case of *Sindhubai* (supra), the owner has chosen not to appear in the proceedings neither before the Tribunal nor before this Court, it would be very difficult for the claimants to recover the amount of compensation from the owner and they would not be able to enjoy the fruits of decree in their favour.

15. For the reasons aforesaid, I do not find any merit in the present appeal and therefore no interference is warranted in the judgment and award passed by the Tribunal. The appeal needs to be dismissed and the same is accordingly dismissed. There shall be no order as to costs.

16. The appellant is directed to deposit balance amount of compensation, if not already deposited, with the Registry of this Court within a period of two months. After depositing of the aforesaid amount, the respondent nos.1 and 2 would be entitled to withdraw the same.

17. The Registry is directed to release the aforesaid amount (if deposited by the appellant) within a period of two weeks after details of account number, furnished by respondent nos.1 and 2.

18. First Appeal stands disposed of accordingly.

JUDGE

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Ambulkar