

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

FIRST APPEAL NO. 562 OF 2009

Oriental Insurance Co. Ltd.
Divisional Office, Amravati
through the Divisional Manager,
Nagpur Divisional Office-II,
Kanoria House, Civil Lines, Nagpur

} .. **APPELLANT**

Versus

1. Pandurang s/o Gopalrao Pokale,
aged 50 years, Occ : Labour,
2. Sou. Kamlabai Pandurangji Pokale,
aged about 45 years, occ : Housewife,
3. Sanjay s/o Pandurang Pokale,
aged about 11 years, Minor, through
father and natural guardian,
All residents of village Kurha,
Tq. Tiwasa, Dist., Amravati
4. *Ramchandra Marotrao Pakde, - (**ABATED**)*
aged about 50 years, Occ. : Agriculturist
and businessman and Electric decoration
contractor,
R/o Village Kurha, Tq. Tiwasa, Distt.
Amravati
5. Subhash Keshavrao Raut
R/o Nandgaon Peth,
Tq. And Dist. Amravati

} .. **RESPONDENTS**

} **ABATED**

Mr. D.N. Kukday, Advocate for appellant

Mr. R.D. Wakode, Advocate for respondents No.1 to 3

CORAM: V.M. DESHPANDE, J.

DATE : 27/10/2021

ORAL JUDGMENT :

ADMIT. Taken for final hearing.

2. This is an appeal filed by the appellant – insurance company under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and Award passed by the learned Chairman, Motor Accident Claims Tribunal, Amravati dated 17/02/2007 in Motor Accident Claim Petition No.40/1997.

3. By the impugned Award, the learned Chairman, partly allowed the Claim Petition and directed the present appellant and the original respondents No.2 to 4 to pay jointly and severally an amount of Rs.1,34,500/- inclusive of amount of compensation under Section 140 of the Motor Vehicles Act along with interest @7.5% from the date of petition i.e. 13/01/2003 with the costs of the petition to the claim petitioners.

4. The appellant – insurance company was the respondent No.5 in the Claim Petition, whereas the present respondents No.1 to 3 were the claimants. The respondent

No.4 in this appeal passed away and therefore, as per the order of Registrar (Judicial) of this Court dated 24/11/2009, the appeal stands abated against him. Though the respondent No.5 is the owner of the offending tractor duly served nobody appeared from 2009 till today.

5. The appellant – Oriental Insurance Company Limited is represented by Advocate Shri D.N. Kukday, whereas the original claimants are represented by their Advocate Shri R.D. Wakode.

6. In short, the case of the claimants before the Tribunal was that deceased Ramesh was son of the claimants No.1 and 2 and brother of claimant No.3 and at the time of his untimely death due to accident he was about 18 years. According to the claimants, he was working as a Coolie / conductor on a tractor No. MH-27-A-7225. The claim petition proceeded that when on 15/06/1996 the said tractor was duly ensured with the appellant – insurance company and on that day the deceased was working as a Coolie on the said tractor, due to rash and negligent driving of the driver of the said

tractor it turned turtle, resulting into Ramesh coming under the tractor and died on the spot. With this basic allegation, the claimants filed a Claim Petition and claimed compensation of Rs.1,50,000/-.

7. Though various defences were raised before the learned Tribunal by the present appellant, before this Court, the learned counsel for the appellant restricted the case of the appellant – insurance company to the extent that the deceased was not covered under the insurance policy as it could be seen from the registration particulars. He therefore, submitted that the appeal needs to be allowed.

8. The argument of the learned counsel for the appellant is countered by the learned counsel for the original claimants by inviting my attention to Exh.96, which is a policy issued by the appellant - insurance company in respect of the tractor in question and he submitted that the view taken by the learned Tribunal is erroneous.

9. It is to be mentioned here that looking to the quantum of compensation granted by the learned Tribunal, the

appellant – insurance company did not challenge the quantum before this Court in this appeal.

10. According to Shri Kukday, learned counsel for the appellant, the registration particulars show that the sitting capacity as one only and that even according to the claimants the deceased was a Coolie and was not a driver. If that be so, it is his submission that he was unauthorized passenger and it was not covered under the policy issued by the appellant - insurance company.

11. I am afraid that his submissions could be accepted. Firstly, Exh.78 the registration particulars on which Shri Kukday have heavily relied is not issued by the insurance company, but, it is issued by the Transport Officer, Amravati and it is in respect of the registration particulars. Obviously, the sitting capacity of a tractor in the registration particulars will be shown as one only.

12. Exh.96, which is cover note shows that it was issued in lieu of policy. Perusal of Exh.96 would show that it was for tractor No. MH-27-A-7225 and trailer No. MH-27-A-2688.

Under the head licence carrying capacity goods and passengers and the said note shows 4 + 1 + 1. On behalf of the appellant - insurance company, Shri Dilip Vishwanth Hegu entered into the witness box as its witness No.1. His evidence shows that he could not produce the policy which was issued under cover note (Exh.96) because it was not having. His evidence is totally silent that the policy was only for driver and not for companion on a tractor. In that view of the matter, the Court is required to fall back on Exh.96 as a document which is having a binding force on the appellant - insurance company.

13. In view of the undisputed facts before this Court that Ramesh was travelling on the tractor No. MH-27-A-7225 as a Coolie and in view of Exh.96, the appellant – insurance company has covered 1 + 1 on tractor and 4 passengers on a trailer, in my view, the submission made by the learned counsel for the appellant cannot be accepted.

14. The learned Chairman of the Tribunal has properly considered the defence of the appellant and has passed the impugned order. Besides the aforesaid, no other contention was

canvassed before this Court. I have to pass the following order :

ORDER

- (i) The judgment and Award passed by the Chairman, Motor Accident Claims Tribunal, Amravati, dated 17/02/2007 in Motor Accident Claim Petition No.40/1997 is hereby confirmed.
- (ii) The Appeal filed by the appellant – insurance company stands dismissed.
- (iii) The amount deposited by the appellant before this Court is permitted to be withdrawn by the claimants i.e. respondents No.1 to 3 in this Appeal along with accrued interest.
- (iv) No order as to costs.

JUDGE

MP Deshpande