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

FIRST APPEAL NO.810/2019
In
M.A.C.P. No.9/2013

(Ori.NA on.3) On RA

Bajaj Allianz General Insurance Co. Ltd.,
Regional Office at 7th Floor, Shriram Shyam Towers,
C\ Block no.63, -Wing, Kingsway, Sadar, Nagpur
Having its branch office at 2nd Floor,
Shraddha Heights, Old Income Tax Chowk,
Gorakshan, Akola
through its Manager (Legal) Shreshtha Biswas. ...**APPELLANT**

VERSUS

(Ori. claimant no.1 & 2.) On R.A.

1. Fatemabi w/o Sk. Salim
   Aged about 55 years, Occ- household.

2. Sk. Salim s/o Sk. Abdulla
   Aged about 57 years, Occ.- Labour,
   Both residents of Jama Masjid Chowk,
   Barshitakli, District Akola.

(Ori. NA 1)

3. Abdul Nasir s/o Abdul Gaffar
   Aged adult, Occ.-Driver,
   R/o-Mujawarpura, Barshitakli,
   Taq. Barshitakli, District Akola.

(Ori.NA no.2)

4. Maksudkhan s/o Rasulkhan
   Aged adult, Occ- Owner,
   R/o.-Gulzarpura, Barshitakli,
   Taq. Barshitakli, District Akola. ...**RESPONDENTS**

Mrs. A.S. Athalye, Advocate for appellant.
Shri S.D. Chopde, Advocate for resp. nos. 1 and 2.
Shri R.L. Khapre, Senior Advocate assisted by Shri D.R. Khapre, Advocate as *Amicus Curiae*.

CORAM : PUSHPA V. GANEDIWALA, J.
Reserved on : 20-08-2021.
Pronounced on : 27-09-2021

JUDGMENT :

This First Appeal is preferred by the insurer of the offending vehicle TATA 709, a goods carriage vehicle, in which the deceased was travelling, raising a grievance that the learned Member of the Motor Accident Claims Tribunal, Akola, has erroneously saddled the liability on the insurance company to pay the amount of compensation to the claimants i.e. the legal representatives of the deceased, the deceased being travelling in a goods carriage vehicle against the terms and conditions of the policy.

2. The factual matrix, leading to filing of the present Appeal, may be stated as under :-

The claimants/respondent nos. 1 to 3 herein filed a Claim Petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'M.V. Act') for grant of compensation of Rs. 5 lakh against the driver, owner and the insurer of the offending vehicle. The claimants state that on 11-02-2012 at about 22.00 hours, when the deceased Sk. Amin Sk. Salim along with his brother and driver of TATA 709 bearing registration no. MH-20/W-6567 was coming from Umarkhed to Barshitakli, when their vehicle reached near Dudkhed Phata on Washim to Shelu Bazar road, suddenly back tyre of TATA 709 was burst. Consequently, the vehicle turned turtle and due to that the deceased sustained injury and died in Ozone Hospital, Akola, during his treatment on 12-02-2012.

3. The claimants are the parents of the deceased. They state that at the time of accident, the deceased was well bodied person of 20 years old and working as a Coolie with the owner of the offending vehicle Maksudkhan s/o Rasulkhan, respondent No. 4 herein.

4. The respondent no.4, the owner of the offending vehicle, in his written statement, resisted the Claim Petition, however, admitted that the deceased was working with him and earning Rs. 5000/- per month. He further admitted his ownership of the offending vehicle which was insured with the appellant-Bajaj Allianz General Insurance Company Limited vide Policy No.OG-12-2009-1803-00000116 valid from 07-06-2011 to 06-06-2012. It is specifically stated that at the relevant time the driver of the offending vehicle was holding a valid and effective driving license.

5. The appellant, the insurance company, in its written statement did not dispute the existence of valid and effective insurance policy of the offending vehicle at the relevant time. However, the appellant resisted the Claim Petition being false and not maintainable

either on facts or in law. The appellant took statutory as well as general defenses with regard to driving license of the driver to drive the said vehicle and with regard to breach of policy conditions by the owner of the vehicle.

6. The learned Member of the M.A.C.T. framed necessary issues and recorded the evidence as led by the parties. The claimant no.1-Fatemabi examined herself at Exhibit-20 and brought on record all the Police papers so also the insurance policy at Exhibit-30, chargesheet at Exhibit-31, driving license of the driver of the offending vehicle at Exhibit-32 and School Leaving Certificate of the deceased at Exhibit-33.

7. While the Insurance Company examined two witnesses namely Anuruddha Kiran Kale and Amit Ravindra Yawalkar. Both the witnesses are examined on the point that the said vehicle is a goods carriage vehicle and the passengers were not allowed to travel in the said vehicle and so also the sitting capacity of the said vehicle is of only two persons i.e. the driver and the cleaner.

8. The learned Member of the M.A.C.T. meticulously appreciated the oral and documentary evidence on record and recorded

the findings that the driver, owner and the insurer of the offending vehicle are jointly and severally liable to pay compensation of Rs.6,15,000/- inclusive of the amount of 'no fault liability' to the claimants. This judgment dated 21-03-2018 in M.A.C.P. No.09/2013 of the learned Member of the M.A.C.T. is impugned in this appeal by the Insurance Company.

9. I have heard Mrs. A.S. Athalye, learned Counsel for the appellant and Shri S.D. Chopde, learned Counsel on behalf of the claimants.

Shri R.L. Khapre, learned Senior Counsel is kind enough to assist the Court on a question of law with regard to whether the Coolie who travelled in the vehicle for the purpose of loading and unloading the goods would cover under the insurance policy Exh. 30.

10. Mrs. Athalye, learned Counsel for the Insurance Company, emphatically submitted that the deceased was travelling in the goods carriage vehicle alongwith his brother and driver, which is against the terms and conditions of the policy as the sitting capacity of the goods carriage vehicle is of two persons only i.e. driver and cleaner. Learned counsel further submits that the deceased was allegedly travelling in the said vehicle could not have been held as a third party. Learned Counsel submits that as per the Indian Motor Tariff Endorsement-39

(IMT-39) the risk of the cleaner or conductor or persons employed in loading and unloading is covered. However, they are not allowed to travel in the vehicle alongwith the goods. The deceased was working as a coolie. Coolie is also not allowed to travel in the vehicle as he is for the purpose of loading and unloading of the goods. The seating capacity in the goods carriage vehicle is only for the driver and the cleaner. According to the learned counsel there is a clear breach of the conditions of the policy and the same has been very well established by the appellant by examining its two witnesses. Therefore, the learned Counsel for the appellant urged to exonerate the appellant from payment of compensation to the claimants.

11. As against this, learned Counsel Shri Chopde for the respondents, while supporting the judgment and award of the Tribunal submitted that the nature of the policy is a package policy and the extra premium of Rs. 25/- each for two persons i.e. Rs. 50/- was paid to cover the liability for the purpose of operation and maintenance.

12. Learned Senior Counsel Shri Khapre assisted the Court by placing reliance on the judgment of Larger Bench of the Hon'ble Apex Court in the case of ***Hamnumanagouda vs United India Insurance Company Limited and others***, reported in ***AIR 2015 SC 1467*** and

submitted that as per this judgment the deceased in the instant case would be covered under the policy conditions as extra premium was paid for the persons employed in connection with the operation and maintenance and/or loading and unloading of the offending vehicle.

13. I have considered the submissions on behalf of the learned counsel and perused the record. At the outset, the testimony of the claimant-witness would not be of any assistance considering the point to be determined in this appeal except that this witness brought on record the relevant documents. This witness was not the privy to the agreement of insurance between the insured and the insurer. Evidently, the driver was holding the valid and effective driving license at the relevant time. Secondly, comprehensive/package policy of the offending vehicle which was effective at the time of accident is also not disputed. A perusal of the document of Insurance Policy (Exhibit-30) would indicate that the owner of the vehicle has paid the additional premium of Rs.50/- for two persons in connection with the operation and maintenance of motor vehicle. This fact is also admitted by the witnesses who were examined on behalf of the insurance company. Insurance policy (Exhibit-30) is subject to endorsement IMT-39. Insurance policy (Exhibit-30) would further reflect that the sitting capacity of the vehicle is of two persons.

14. The point for determination of this Court is, “whether the risk of the deceased who was travelling as a Coolie in the goods carriage vehicle would be covered under the insurance policy.” It is undisputed that Rs.25/- each for two persons have been paid by the owner as an additional premium covering the liability to persons employed in connection with the operation and maintenance of the insured goods vehicle. Even IMT-39 in Clause 10 (a) of Section 4 which are the Regulations pertaining to Tariff for Commercial Vehicles provides that liability to any paid driver or cleaner or conductor or persons employed in loading/unloading may be covered on payment of Additional Premium @ Rs.25/- per employee.

15. The Hon'ble Apex Court in the case of ***Hanumanagouda*** (supra) as relied on by the learned Senior Counsel has clearly held that the Clause - "persons employed in connection with the operation" is clearly over and above the coverage provided by the policy to "persons employed in connection with loading/unloading of motor vehicle". The Hon'ble Apex Court further held that as Gumasthe, the deceased was accompanying the goods in transit for the purpose of delivery of goods, obviously the deceased would be covered by the expression "persons employed in connection with operation of motor

vehicle". In the instant case, as seen earlier, the owner of the vehicle has paid Additional Premium of Rs.25/- each to cover the risk of two persons employed in connection with the operation and maintenance. In view of the ratio of the Hon'ble Apex Court, the risk of the persons employed for the purpose of loading and unloading of the goods carried in the vehicle, would clearly cover under the policy if the extra premium is paid. The deceased being Coolie, employed by the owner of the vehicle for the purpose of operation, maintenance and/or loading- unloading of the motor vehicle, would very well be covered under the insurance policy. Considering the ratio as laid down by the Hon’ble Apex Court in the case of ***Hanumanagouda*** (supra), the contention of the learned counsel Mrs. Athaley that the deceased was not allowed to travel in the vehicle, is without any substance, warranting any consideration. The deceased was the employee of the insured-the owner of the goods carriage vehicle, employed for the purpose of loading and unloading of the goods, and extra premium is paid by the owner to cover his liability. The witnesses examined by the insurance company could not say anything substantive in support of the stand of insurance company so as to absolve the company from its liability for payment of compensation. Both the witnesses examined by the insurance company deposed that the deceased had illegally travelled in the goods vehicle in breach of the insurance policy.

Considering the aforesaid discussion and the law laid down by the Apex Court in the case of ***Hanumanagouda*** *(supra)*, I do not find the same being, worthy of any consideration.

16. It is worthwhile to note that the judgment in the case of ***Hanumanagouda*** *(supra)* is further relied on by the co-ordinate Bench of this Court in the case of ***Gokuldas Kesrimal Bharti and others vs Smt. Meena and others*** in F. A. No. 209 of 2003 decided on 22.12.2015.

17. Under the policy Exh.30, apart from statutory liability of the third party, considering the special contract between the insurer and the insured, i.e. IMT-39, the insurer is liable for liability under the M. V. Act, at least for two persons i.e., driver and the coolie. The learned Member of the Tribunal has rightly appreciated the evidence and foisted joint and several liability on the tort-feasor, insured and the insurer of the vehicle.

18. In view of the above discussion, I answer the point in the affirmative. The learned Tribunal has appreciated the material on record in a just and proper fashion. Hence, I do not find any infirmity in the impugned judgment and award, warranting any interference. Appeal is devoid of any merit and deserves to be dismissed and the

same is accordingly dismissed.

19. In the circumstances, no order as to costs.

20. First Appeal stands disposed of.

JUDGE

Deshmukh