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

FIRST APPEAL NO.692 OF 2004

New India Assurance Company Ltd.
Through it's Divisional Manager,
Adalat Road, Aurangabad. .. **APPELLANT**
[Orig. Respondent no.3]

VERSUS

1] Thakubai w/o. Khandu Solat,
Age 52 years, Occu. Household.
R/o. Gangapur, Tq. Gangapur,
District Aurangabad.

2] TATA Engineering & Locomotive
Company Limited,
Through it's Regional Sales Office,
TELCO, Ambala-Chandigarh Road,
District Ropur [Punjab] .. **RESPONDENTS**

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Mr.S.G.Chapalgaonkar, Advocate for the appellant.
Mr.V.D.Patnoorkar, Advocate for respondent no.1.
Mr.A.S.Bajaj, Advocate for respondent no.2.

...

CORAM : S.G.DIGE, J.

Reserved on : 03.08.2022
Pronounced on: 21.09.2022

JUDGMENT :

1] The issue involved in this appeal is whether the Insurance Company is liable to pay compensation when the vehicle was covered under transit policy.

Brief facts of the case are as under :-

2] On 24.05.1998 the deceased Khandu Solat was going towards Rajaram Takali in TATA chassis bearing registration No. MH-12/685 with the goods necessary for the engagement. When the vehicle reached near Nandrabad, one motor taxi came from opposite side which was carrying some bamboo sticks tide on the top of taxi. At that time, both vehicles were driven in rash and negligent manner at excessive speed without taking into consideration the situation of the road. The bamboos tide on the top of taxi hit on the face and head of the driver Shri Laxman Solat of the TATA chassis, consequently he lost the control and went in the ditch by the side of the road. The deceased, who was sitting in the TATA chassis, was thrown away from the vehicle. He received serious injuries. Subsequently, he succumbed to the injuries.

3] Petition filed by respondent no.1 – original claimant for getting compensation before the Motor

Accident Claims Tribunal, Aurangabad [for short 'the Tribunal']. The Tribunal has awarded the compensation. The said Judgment and order is under challenge by the appellant – original respondent no.3 [Insurance Company].

4] It is the contention of the learned counsel for the appellant that the chassis involved in the accident is neither the goods vehicle, nor it is a passenger vehicle. The passenger or goods cannot be carried in the said vehicle. The Insurance Company has not covered the risk of, either any passenger, or the goods carried on the chassis under the insurance policy. The vehicle in question was the bare chassis. The transit policy was given to the said vehicle to carry from the place of its manufacturer to the dealer. In these circumstances, by carrying the passenger, the insurer has committed breach of specified policy condition, hence, the Insurance Company is not liable to pay any compensation, but this fact is not considered by the Tribunal, hence, requested to allow the appeal. The learned counsel for the appellant relied on the judgments in the cases of the **United India Insurance Co.Ltd. Vs. Shaheda Parvin Allauddin Kazi & others** in First Appeal No.572 of 2005 decided on 08.04.2008, **National Insurance Co. Ltd. Vs. Jugal Kishore and others** in Civil Appeal No. 3677 of 1984, decided on 09.02.1988, **Oriental Insurance Co. Ltd. Vs. Devireddy Konda Reddy and others** reported in **[2003] 2 SCC 339** and in the case of **New India Assurance Co. Ltd. Vs. Asha Rani** in Civil Appeal No.5385 of 2001 decided on 03.12.2012.

5] It is the contention of the learned counsel for the respondents that the deceased was travelling in the said TATA chassis along with goods. He was relative of the driver. So it cannot be considered as a paying passenger. The Insurance of the said vehicle was taken, hence, the person, who was travelling in the said vehicle, is covered under the insurance policy. The Tribunal has considered all the aspects and passed the judgment, which is legal and valid.

6] I have heard all learned counsel. Perused the judgment and order passed by the Tribunal. Admittedly, the TATA chassis [offending vehicle] was going towards dealer from the place of manufacturer and there was temporary registration of the said vehicle.

7] Section 43 of the Motor Vehicles Act provides for issuance of temporary registration. Sub-section [2] of Section 43 of the Motor Vehicles Act reads thus:-

> *(2) A registration made under this section shall be valid only for a period not exceeding one month, and shall not be renewable :*
>
> *Provided that where a motor vehicle so registered is a chassis to which a body has not been attached and the same is detained in a workshop beyond the said period of one month for being fitted (with a body or any unforeseen circumstances beyond the control of the owner), the period may, on payment of such fees, if any, as may be prescribed, be extended by such period of periods as the registering authority or other prescribed authority, as the case may be, may allow.'*

This section states the temporary registration period is only for one month. The policy issued to the said vehicle was transit policy and the body of the vehicle was only chassis and not a whole body. When there was only a chassis vehicle then carrying passenger in it, is not permitted, hence, liability of the deceased cannot be fastened on the appellant. Respondent no.1 is the driver of the said truck and respondent no.2 is the owner of the said TATA chassis, hence, liability of paying compensation is on respondent no.1 and respondent no.2. The Tribunal has erroneously held that the appellant is liable for paying compensation as the insurance policy was taken from the appellant. As observed earlier, it was transit policy. It was not applicable to other person except driver of offending vehicle. Hence, I pass the following order:-

ORDER

i] The appeal is allowed.

ii] The appellant is exonerated from paying the compensation. Respondent nos.1 and 2, jointly and severally, are liable to pay the compensation as ordered by the Tribunal.

iii] Accordingly, First Appeal is disposed of.

[S.G.DIGE]
JUDGE

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