IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1180 OF 2018

1. Ujjwala wd/d. Uddhav Sonawane,
Age: 24 Years, Occu. Today Nil,

2. Mayur S/o. Uddhav Sonawane,
Age: 08 Years, Occu. Education,

3. Sahil S/o. Uddhav Sonawane,
Age: 07 Years, Occu. Education,

(Claimant Nos. 2 and 3 being minors
U/g. of mother i.e. claimant No.1)

4. Raosaheb S/o. Yadavrao Sonawane,
Age: 57 Years, Occu. Nil,

All R/o. At Kingaon, Tq. Phulambri,
` Dist. Aurangabad **...Appellants**
(Orig. claimants)

Versus

1. Raju S/o. Dnyanoba Bhadarge,
Age : Major, Occu. Business,
R/o. At Sanjay Nagar, Mukundwadi,
Tq. & Dist.Aurangabad.
(Registered Owner of Truck No. MH-16-Q-6129)

2. The Divisional Manager,
United India Insurance Company Ltd.
Osmanpura Circle, Station Road,
Tq. & Dist. Aurangabad. **...Respondents**
(Orig. Respondents)

Mr Swapnil S. Dargad, Advocate for Appellants
Ms Sayali Tekale, Advocate holding for
Mr Prasanna D. Dadape, Advocate for Respondent No.1
Mr V.R. Mundada, Advocate for Respondent No. 2

CORAM : SHRIKANT D. KULKARNI, J.

Reserved on : 04.01.2022
Pronounced on : 22.04.2022

JUDGMENT :

1. The appellants/claimants have challenged the impugned Judgment and award to the extent of exonerating respondent No.2/insurance company from the liability to make payment of compensation.

2. The dispute in narrow compass is as under :-

(a) Uddhav S/o Raosaheb Sonawane (since deceased) was stated to be in the employment of respondent No.1 as a cleaner on his truck bearing No. MH-16-Q-6129 from 01.01.2013 till the date of accident. There was employee-employer relationship between the deceased and respondent No.1/owner of the vehicle.

(b) On 14.08.2015, deceased was proceeding towards Nanded with driver on above said truck as per the directions of respondent No.1. The said truck reached near Yashwanti Dhaba at Jalna Mantha Road. When the truck was stopped by the driver on the side of the road, the truck driver instructed to the cleaner/deceased to check air pressure of the tyres and radiator water. The deceased stepped down from the truck when unknown vehicle gave dash to the deceased from the backside and ran away from the spot. The deceased was seriously injured in the accident and succumbed to injuries in the Government hospital at Jalna. Crime No.109/2015 came to be registered against unknown vehicle. It is the case of the claimants that the said accident occurred during the course and out of the employment of deceased with respondent No.1/owner of the truck. The said truck was duly insured with respondent No.2/insurance company. As such, respondent Nos. 1 and 2 are jointly and severally liable to pay the compensation. Notice in respect of demand of compensation was issued to the respondents but the respondents failed to pay compensation. The appellants/claimants filed the claim vide Application W.C. No.02/2016 before the Judge, Labour Court at Aurangabad and sought compensation of Rs.10,00,000/- with interest @ 12% per annum.

(c) The learned Judge, Labour Court after considering the rival pleadings of the parties, evidence on record and argument advanced on behalf of both the sides was pleased to award compensation of Rs.8,31,920/- along with 12% interest per annum from the date of accident till its realization by fastening liability on respondent No.1/owner of the truck. The learned Judge, Labour Court/Ex-Officio Commissioner for Workmen's Compensation also pleased to issue directions to respondent No.1 to pay penalty of 50% on the amount of compensation. The Insurance Company is exonerated from the liability by holding that the risk of the deceased was not covered by the policy.

(d) Feeling aggrieved by the impugned Judgment and award passed by the Commissioner for Workmen's Compensation and Judge, Labour Court-1, Aurangabad the original claimants have preferred this appeal.

3. Heard Mr S.S. Dargad, learned counsel for the appellants/claimants, Mr V.R. Mundada, learned counsel for respondent No.2/insurance company and Ms Sayali Tekale holding for Mr Prasanna Dadape, learned counsel for respondent No.1.

4. Mr Dargad, learned counsel for the appellants submitted that the truck involved in the accident was duly insured with respondent No.2 on the date of accident. According to the terms of the insurance policy, it was a package policy. The premium in respect of IMP 28 is accepted by respondent No.2/insurance company, and therefore, risk of deceased cleaner is covered. He submitted that the Tribunal has committed manifest error in exonerating the insurance company from the liability to pay compensation. The Tribunal has erred in examining terms of the package policy which is on record while recording findings against issue No.3. He therefore urged to allow the appeal.

5. Mr Dargad, learned counsel has placed his reliance on the following citations :-

(i) ***Ramchandra Vs. Regional Manager, United India Insurance Company Limited., reported in (2013) 12 SCC 84.***

(ii) ***Mr Nagu Naik Vs. Swapnesh Prabhu reported in 2015 SCC Online Bom 4998***

(iii) ***Raju Narayan Ghodekar Vs. Santoshkumar Vaijinath Patel and Ors. First Appeal No.1774/2014 decided on 23rd August, 2018 (Aurangabad Bench).***

6. Mr V.R. Mundada, learned counsel for respondent No. 2 supported the findings recorded by the Tribunal. He submitted that no additional premium was paid by the owner of the vehicle so as to cover risk of the cleaner. Owner of the vehicle has not paid additional premium in respect of cleaner to cover his risk, and therefore, the Tribunal has rightly exonerated the insurance company from the liability to pay compensation. He, therefore, urged to dismiss the the appeal by placing reliance on the decision of this Court in case of ***Bajaj Allianz General Insurance Co. Ltd. Vs. Manisha w/o Lahu Kale and Ors. First Appeal No. 2742/2015 (Aurangabad Bench).***

7. I have considered the submissions of learned counsel for both the sides. The terms and conditions of the insurance policy of the vehicle involved in the accident are important.

8. The Tribunal while recording the findings against issue Nos. 1 and 2, has held that deceased was working as a cleaner on the truck of respondent No. 1 and he died during the course of and out of employment. The copy of insurance policy of the truck bearing No. MH-16-Q-6129 involved in the accident is placed on record. The date of accident is covered the date of expiry of policy is midnight on 10.12.2015 and the accident has taken place on 14.08.2015 and thereby covered the date of accident.

9. On perusing the policy, it seems that it pertains to GCV Public Carrier other than three wheeler package policy. The certificate of

insurance is issued in the form-51 of Central Motor Vehicles Rules, 1989.

10. The schedule of premium is important in this case which reads thus -

SCHEDULE OF PREMIUM			
OWN DAMAGE		**LIABILITY**	
Basic premium on Vehicle and accessories		Basic TP Total	Rs. 15,365.00 Rs. 15,365.00
		Add :	
A. Basic = OD Total	Rs. 3,624.00 Rs. 3,624.00	Compulsory PA for Owner Driver	Rs. 100.00
Gross OD (A)	Rs. 3,624.00	LL to Paid Driver IMT-28	Rs. 200.00
		Sub Total Additions	Rs. 300.00
		Gross TP (B)	Rs. 15,665.00
		Gross OD & TP (A) + (B)	Rs. 19289.00

11. The question comes whether the premium in respect of IMT-28 accepted by respondent No.2/insurance company has covered the risk of cleaner. In this context, I have gone through the India Motor Tariff Manual. Item No.7/extract benefits is important which has covered endorsement IMT-28.

> **7. EXTRA BENEFITS**
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> Premium for each of the following extra benefit opted for by the insureds is to be shown separately in the premium computation table :
>
> ***(i) Legal liability to paid drivers/and/or cleaner employed in connection with the operation and/or maintenance of motor vehicle under the Workmen's Compensation Act, Fatal Accidents Act and at***

Common Law.

(ii) Legal Liability to employees of the insured traveling in and/or driving the employer's vehicle.

Liability to employees of the insured traveling in or driving the employer's vehicle, either excluding or including the paid driver may be covered on payment of Additional Premium @ **Rs. 25/-** per employee, the premium being chargeable on the total number of such employees carried (including the paid driver, if applicable) but not exceeding the maximum licensed seating capacity of the vehicle. The Additional Premium of **Rs. 25/-** per employee is net irrespective of any period of insurance not exceeding 12 months.

Endorsement IMT-28 (for paid driver and/or cleaner) or IMT-29 (employees other than paid drivers and/or cleaner) as applicable is to be used.

12. Having regard to the endorsement IMT 28, the risk of driver and or cleaner is covered if premium is accepted by the insurance company. As pointed out earlier, respondent No. 2 has accepted the premium of Rs.200/- under IMT-28 and thereby risk of the cleaner is covered in this case.

13. Mr V.R. Mundada, learned counsel for respondent No.2/insurance company has placed reliance in case of ***Bajaj Allianz General Insurance Co. Ltd. Vs. Manisha w/o Lahu Kale and Ors.*** (supra). However, the facts of the cited case are quite different from the facts of the case in hand and does not extend any help to the stand taken by the insurance company.

14. In case of ***Raju Narayan Ghodekar Vs. Santoshkumar Vaijinath Patel and Ors.*** (supra), it is held by this Court (Bench at Aurangabad) that if the insurance policy of the vehicle is comprehensive package policy, then in view of the provisions under section 147 of the Motor Vehicles Act, 1988, the risk of the deceased cleaner being carried in the offending vehicle, is statutorily covered by the said policy.

15. The facts of the case in hand and the facts of the above cited case are practically identical thereby covered the risk of the deceased cleaner.

16. In case of ***Ramchandra Vs. Regional Manager, United India Insurance Company Ltd.*** *(supra),* it is held by the Hon'ble Supreme Court in para Nos. 20 and 21 which reads thus -

> *The liability to pay compensation in respect of death or bodily injury to an employee should not be restricted to that payable under the Workmen's Compensation Act but should be more or unlimited. However, the determination of that question in case of a motor accident would depend upon whether an insurance policy has been taken by the vehicle owner by making payment of extra premium and whether the policy also contains a clause to that effect. Thus, the compensation payable to the employee can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy. (Paras 20 and 21)*
>
> *The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the Old MV Act i.e. under Section 147(1) proviso (i) of the new MV Act, but the same cannot bind the parties or prohibit*

them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higer, it is also manifestly clear that insofar as the entitlement of the claimant cleaner of the vehicle is concerned, the same cannot be automatically restricted only to the compensation amount that may be claimed under the Workmen's Compensation Act and he is entitled to compensation even under the Motor Vehicles Act but which will depend upon the terms and conditions of the policy of insurance (Para 23)

17. Having regard to the legal position made clear by the Hon'ble Supreme Court in case of ***Ramchandra Vs. Regional Manager, United India Insurance Company Ltd.*** (supra), the stand taken by the insurance company does not sustain in the eye of law.

18. Having regard to the above reasons and discussion, the findings recorded by the learned Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court-I, Aurangabad thereby exonerating the insurance company from the liability is liable to be quashed and set aside. Respondent No.1/owner of the vehicle and respondent No.2/United India Insurance Company Ltd., are jointly and severally liable to pay the compensation assessed by the learned Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court-I, Aurangabad. Having regard to the facts of the case, in my considered view, it is necessary to reduce the penalty from 50% to 20%. Accordingly, it is reduced to 20% in view of Section 4-A of the Employee's

Compensation Act, 1923. To that extent, the award passed by the learned Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court-I, Aurangabad needs to be interfered and modified.

19. In the result, the appeal succeeds.

ORDER

(A) The appeal stands allowed.

(B) The impugned Judgment and award passed in Application W.C. No. 02/2016 by the Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court-I, Aurangabad is modified to the following extent :-

(2) Respondent Nos. 1 and 2 are jointly and severally liable to pay compensation of Rs. 8,31,920/- (Rupees Eight Lakhs Thirty One Thousand Nine Hundred and Twenty Only) with 12% interest per annum from the date of accident till its realization.

(3) Respondent Nos. 1 and 2 are jointly and severally shall pay 20% as penalty on the amount of compensation and 12% interest per annum thereon after expiry of one month from the date of Judgment and award passed by the Ex-Officio Commissioner for Workmen's Compensation and Judge, Labour Court-I, Aurangabad till full payment to the appellants/claimants.

(C) The Award stands modified in above terms.

(D) The amount of compensation if lying with the Registry, it be paid to the appellants/claimants as per procedure.

(E) No no order as to costs.

(F) The record and proceedings be sent back to the concerned Court.

(G) The appeal is accordingly disposed of.

(H) The Civil Application, if any, also stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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