

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 396 OF 2012

United India Assurance Company Ltd.,
Through its Deputy Manager,
T.P. Cell, Divisional Office – I,
Osmanpura, Aurangabad.

...Appellant
(Orig. Respondent No.2)

Versus

1. Yashodabai w/o Radhakishan Lokhande
Age: 34 years. Occu: Household,
R/o: Peer Pimpalgaon,
Tq. & Dist. Dist. Jalna.
2. Alka d/o Radhakishan Lokhande,
Age : 9 years, Occu: Nil,
R/o. As above.
3. Krishna s/o Radhakishan Lokhande,
Age : 6 years, Occu: Nil,
R/o. As above.
4. Jayshree d/o Radhakishan Lokhande,
Age : 4 years, Occu: Nil,
R/o. As above.
(Respondent Nos. 2 to 4 are minors
being represented through their
Natural mother i.e. Resp. No.1)
5. Kiran s/o Radhakishan Lokhande,
Age : 22 years, Occu: Nil,
R/o. As above.
6. Banduji s/o Dagdu Lokhande,
Age : 62 years, Occu: Labour,
R/o. As above.
7. Sunderbai w/o Dagdu Lokhande,
Age : 58 years, Occu: Household,
R/o. As above.
**(Respondent No. 7 deleted vide
Court's order dated 24.03.2017)**
8. Narayan s/o Bhaurao Kolte,
Age : 52 years, Occu: Owner of vehicle,
R/o. Tatewadi, Tq. & Dist. Jalna.

...Respondents
(Resp.Nos. 1 & 7 Ori.Claimants)

Mr Swapnil Rathi, Advocate for Appellant
Mr Swapnil M. Mule h/f Mr R.V. Gore, Advocate for
Respondent Nos.1 to 6
Mr B.R. Kedar, Advocate for respondent No. 8

CORAM : SHRIKANT D. KULKARNI, J.

DATE : 23.02.2022

ORAL JUDGMENT :

1, The insurance company has disputed its liability to pay the compensation determined in M.A.C.P. No. 324/2004 by the M.A.C.T., Jalna.

2. Heard Mr Swapnil Rathi, learned counsel for the appellant, Mr Swapnil Mule holding for Mr R.V. Gore, learned counsel for respondent Nos. 1 to 6 and Mr B.R. Kedar, learned counsel for respondent No. 8.

3. Mr Rathi, learned counsel for the appellant/insurance company invited my attention to the impugned Judgment passed by the Tribunal. He submitted that the deceased was travelling in a tipper bearing registration No. MH 10 A 6700 as a cleaner. The tipper was insured with the appellant. It was a 'Act policy' and thereby covering third party risk. He invited my attention to the insurance policy of the vehicle (tipper) vide Exh. 37. He pointed out that schedule of premium and submitted that risk of the cleaner is not covered. The Tribunal has committed grave error in fastening the liability on appellant/insurance company jointly and severally with the owner of the vehicle. He submitted that the appellant/insurance

company needs to be absolved from the liability in view of the provisions of section 147 (1) (b) of the Motor Vehicles Act, 1988.

4. Mr Swapnil Mule, learned counsel for the original claimants/respondent Nos.1 to 6 supported the findings recorded by the Tribunal. He submitted that the Tribunal has considered the evidence on record and the defence raised by the insurance company and rightly turned down the defence by assigning the cogent reasons. There is no error on the part of the Tribunal while fastening the liability on the appellant to pay the amount of compensation jointly and severally with the owner. Mr Mule further submitted that if this court comes to the conclusion that the risk of the cleaner is not covered by the insurance policy of the vehicle, the order of pay and recover may be passed by placing reliance on the citation and in case of ***Manager, National Insurance Co. Ltd. Vs. Sajui P. Paul & Anr.*** reported in ***2013 AIR (SC) 1064***.

5. Mr B.R. Kedar, learned counsel for respondent No. 8/owner of the vehicle submitted that if the insurance policy of the vehicle vide Exh. 37 is carefully studied, one would find that respondent No. 8/owner of the vehicle has paid additional premium of Rs. 25/- covering the risk of one employee. It covers the risk of the cleaner who was travelling in the tipper when met with an accident. Mr Kedar, learned counsel invited my attention to section 147 (1) (b) more particularly proviso and argued that the risk of the cleaner is covered by the insurance policy of the vehicle vide Exh. 37. The Tribunal has rightly held that the insurer and the owner of the vehicle

are jointly and severally liable. Mr Kedar, learned counsel has placed his reliance on the citation in case of ***Ramashray Singh Vs. New India Assurance Co. Ltd. and others*** reported in ***AIR 2003 SC 2877***.

6. I have gone through the impugned Judgment passed by the Tribunal more particularly in respect of defence raised by the appellant/insurance company, relevant evidence and the findings recorded by the Tribunal. I have also carefully examined the insurance policy of the vehicle more particularly schedule of premium. The schedule of premium of the vehicle (tipper) reads thus -

Schedule of Premium

B.T.P. BASIC	800.00
Compulsory PA to Owner-Driver	100.00
Amount 200000	
WC to employee 1	25.00
Total Liability Premium Rs. 925.00	

7. Having regard to the above referred schedule of premium, it is very much clear that the owner of the vehicle has paid additional premium of Rs. 25/- in respect of one employee and that has covered the risk of the cleaner. When the owner of the vehicle has paid additional premium in respect of his one more employee apart from driver, certainly, the insurer cannot avoid its liability to pay the compensation though it is a 'Act policy'.

8. In case of ***Ramashray Singh Vs. New India Assurance Co. Ltd. and others*** (supra), the Hon'ble Supreme Court has made the legal position clear as under :-

The phrases 'any person' and 'any passenger' occurring in cls. (i) and (ii) of sub-sec. (b) to S. 147(1) are of wide amplitude. However, the proviso to the sub-section carves out an exception in respect of one class of persons and passengers, namely, employees of the insured, in other words, if the 'person' or 'passenger' is an employee, then the insured is required under the statute to cover only certain employees. This would still allow the insured to enter into an agreement to cover other employees, but under the proviso to S. 147(1)(b), it is clear that for the purposes of S.146(1), a policy shall not be required to cover liability in respect of the death arising out of and in the course of any employment of the person insured unless, first: the liability of the insured arises under the Workmen's Compensation Act, 1923 and second: if the employee is engaged in driving the vehicle and if it is public service vehicle, is engaged as conductor of vehicle or in examining tickets on the vehicle. If the concerned employee is neither a driver nor conductor nor examiner of tickets, the insured cannot claim that the employee would come under the description of 'any person' or 'passenger'. If this were permissible, then there would be no need to make special provisions for employees of the insured. The mere mention of the word 'cleaner' while describing the seating capacity of the vehicle does not mean that the cleaner was therefore a passenger. Besides the claim of the deceased employee was adjudicated upon by the Workmen's Compensation Court which could have assumed jurisdiction and passed an order directing compensation only on the basis that the deceased was an employee. This order cannot now be enforced on the basis that the deceased was a

passenger. Further plea that khalasi/cleaner was conductor cannot be countenanced. It is doubtful whether a 'khalasi' and a conductor are the same. But assuming this were so, there is nothing to show that the appellant had paid any additional premium to cover the risk of injury to a conductor. On the contrary, the policy shows that premium was paid for 13 passengers and 1 driver. There is no payment of premium for a conductor. Since the concerned employee was not engaged in the capacity of driver in respect of whom alone premium was paid apart from the passengers, owner's claim is unsustainable (paras 10, 13, 15)

Plea that as the policy was a comprehensive one, it would cover all risks including the death of the khalasi unacceptable. An insurance policy only covers the person or classes of persons specified in the policy. A comprehensive policy merely means that the loss sustained by such person/persons will be payable up to the insured amount irrespective of the actual loss suffered.

9. Having regard to the legal position made clear by the Hon'ble Supreme Court, I do not find any merit in the defence raised by the appellant/insurance company. The owner and insurer of the vehicle are rightly held jointly and severally liable to pay compensation in respect of claim of deceased cleaner. The findings recorded by the Tribunal need to be upheld.

ORDER

(i) The Appeal stands dismissed.

- (ii) The impugned Judgment and order passed in M.A.C.P. No. 200/2009 by the Chairman, M.A.C.T., Jalna is hereby confirmed.
- (iii) No order as to costs.
- (iv) The amount of compensation be paid to the original claimants as per the apportionment made by the Tribunal.
- (v) The appeal is disposed of.
- (vi) Civil Application, if any, also stands disposed of.

[SHRIKANT D. KULKARNI, J.]

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