

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 231 OF 2001

The New India Assurance Co.Ltd.,)
At Ratnagiri Branch office, Narayan)
Leela Jayasthamb Ratnagiri) .. Appellant
(Ori. Opponents
No.3.)

Versus

1. Shrimati Droupadi Pandurang Khapare)
age 32 years, Occup:Household work)
2. Kumari Jyoti Pandurang Khapare, age)
10 years, Occup: Education)
3. Kumar Rakesh Pandurang Khapare age)
4 years Occup. Nil)
All residents of At and Post Rai,)
Khaparewadi, Tal. & Dist. Ratnagiri.)
4. Shri. Kundalik Bheemrao Parse.)
age 24 years Occup. Driver,)
Tal. Kawathe Mahankal, Dist.)
Sangli.)
5. Mrs. Smita Ramkrishna Surve.)

age: 30 years. occup. : Transport)
Contractor, Tempo MWF - 9296,)
Municipal house No. 4095, Peth)
Killa, Ratnagiri. Tal. & Dist.)
Ratnagiri.)

6. Shrimati Anandi Gopal Khapare.)
age 70 years. Occup. : Household,)
At and Post Rai, Khaparewadi,)
Tal. & Dist. Ratnagiri.)

.. Respondents
(Respondent 1 to
3 are orig. applicants
and respondent 4,5 &
6 are original
opponents no. 1,2 & 4.)

Ms. S. S. Dwivedi for the Appellant
Mr. S. A. Joshi i/b S. M. Oak for the Respondents

CORAM : S. G. DIGE, J.

DATE : 22nd DECEMBER, 2022.

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accidents Claims Tribunal, Ratnagiri, the appellant/Insurance Company (original respondent no. 3) has preferred this appeal.

2. Brief facts of the case are as under.

3. On 8th June, 1995, the deceased Pandurang Khapare was traveling in Tempo No. MWF 9296 along with goods i.e. Jack-Fruits for sale in Bombay Market, when the tempo reached Kashedi Ghat on Bombay - Goa National Highway, the respondent no. 4 - driver of the tempo could not control the tempo, due to which, the tempo fell in fifteen feet ditch at the left side of the road. The respondent no.3 was driving the tempo with high speed and in a negligent manner, and could not control the speed. Therefore, the accident occurred, deceased Pandurang was injured in the said accident and died on the spot. The crime was registered against the driver of the tempo.

4. The respondent nos. 1 to 3/original claimants (for short '**the claimants**') filed claim petition for getting compensation before the Motor Accidents Claims Tribunal, Ratnagiri (for short '**the Tribunal**'). The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

5. It is the contention of learned counsel for appellant that the tribunal failed to appreciate that the deceased was travelling in aforesaid tempo as a fare paying passenger. The terms and conditions of the Insurance policy issued by the appellant were

breached by the owner of the tempo. Hence, Insurance Company is not liable to pay compensation for the death of passenger carried for hire or reward in view of the terms and conditions of the Insurance Policy. But, this fact is not considered by the tribunal and has passed impugned order. Hence, requested to allow the appeal.

6. It is the contention of learned counsel for the respondents/ claimants that the deceased had hired the said tempo for Rs. 3000/- for transporting the Jack-Fruits to Mumbai. The owner of tempo had admitted this fact. So, it cannot be said that the deceased was travelling in the tempo as fare paying passenger, the order passed by the tribunal is legal and valid.

7. I have heard, both learned counsel, perused judgment and order passed by the Tribunal. It is the contention of learned counsel for appellant that deceased was a fare paying passenger in the said tempo. It has come on record that deceased had hired the said tempo for Rs. 3000/- for transporting Jack-Fruits. Respondent no. 5, who is owner of the tempo, has admitted in her written statement that she had taken Rs. 3000/- as transport charges from the deceased for transporting the Jack-Fruits from Village Rai-Phungus to Bombay. From the admission of respondent no. 5 i.e. owner of the

tempo, it reveals that deceased was not fare paying passenger in the tempo. Moreover, appellant has not adduced any evidence to show that deceased was fare paying passenger. The Tribunal has observed that on the admission of the owner of the tempo, it can be held that the deceased was travelling in tempo along with his goods as the owner of goods. Consequently, the defense taken up by the appellant is not sustainable. I do not find any infirmity in it. The appeal is devoid of merit and I pass the following Order.

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. The respondent nos. 1 to 3/original claimants are permitted to withdraw the amount deposited by the appellant along with accrued interest thereon, if not withdrawn earlier.
 - iii. Statutory amount, if any, deposited be transferred to the Tribunal. Parties are at liberty to withdraw it along with accrued interest there on as per Rule.
8. Pending civil applications, if any, are also disposed of.

(S. G. DIGE, J.)