

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

FIRST APPEAL NO. 1032 OF 2008

RAJESH S/O. PANDURANG GAWANDE)
Aged about 33 years, Occ : Agriculturist)
R/o. 26, Ambazari Layout, Nagpur,)
At & Post Dapura, Post Selu Bazar,)
Taluka - Murtizpur, District – Akola)...**APPELLANT**

Vs.

1 JANRAO S/O. KISANRAO SAKHARE)
Aged about 54 years, Occ: - Labour)
)
2 SAU. CHANDRAKALABAI JANRAO)
SAKHARE)
(Since deceased) by legal heirs)
)
2A Sau.Satyabhama Narhari Kharal)
Aged about 35 years, Occ:Household)
R/o. Uprai, Taluka – Daryapur)
District – Amravati)
)
2B Bandu Janrao Sakhare)
Aged about 33 years, Occ: Labourer)
R/o. Dapura, Taluka – Murtizapur)
District – Akola)
)
2C Sau.Ratnakala Shrikrishna Malthane)
Aged about 31 years, Occ:Household)
R/o. Kalamgaon, Taluka – Daryapur)
District – Amravati)
)
2D Sau.Vandana Vinod Wankhede)
Aged about 28 years, Occ:Household)
R/o. Yendali, Taluka – Daryapur)
District – Amravati)
)

- 3 **SMT. MADHURI VILAS SAKHARE**)
 Aged about 37 years, Occupation : Nil)
)
 4 **VAIBHAV VILAS SAKHARE**)
 Aged about 7 years, Occupation : Nil)
)
 5 **VISHAL VILAS SAKHARE**)
 Aged about 4 years, Occupation : Nil)
)
 Respondents No.4 to 5 through natural)
 guardian by mother i.e.Respondent No.3))
 Respondents Nos.1 to 4 and 5 all R/o.)
 Dapura, Taluka – Murtizapur, Dist.Akola)
)
 6 **BALKRISHNA RAMRAO PATHARE**)
 Aged 39 years, Occupation : Driver)
 R/o. Mouje Takwada, Tq. Murtizapur)
 District – Akola)
)
 7 **NEW INDIA ASSURANCE COMPANY**)
LTD., registered & Head Office New)
 India Assurance Building, 87, M.G.Road)
 Fort, Mumbai – 440 001, through its)
 Regional Manager, Regional Office,)
 Dr. Ambedkar Bhawan, M.E.C.L.Premises)
 4th Floor, High Land Drive,Seminary Hills)
 Nagpur – 440 006 (M.S.))...**RESPONDENTS**

Mr. S. D. Chopde, Advocate for the Appellant.

None for the Respondents.

CORAM : V.G.BISHT, J.

RESERVED ON : 29th MARCH 2022
PRONOUNCED ON : 13th JUNE 2022

JUDGMENT :

1 The appellant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988 (M.V.Act for short) challenging the judgment and award dated 14th May 2007 passed by the Chairman, Motor Accident Claims Tribunal, Akola, (M.A.C.T. for short) in Motor Accident Claim Petition No.139 of 2003. By the impugned judgment and award the learned Chairman, M.A.C.T., Akola, has awarded compensation of Rs.3,41,000/- along with interest at the rate of 8 percent per annum from the date of application till realization.

2 Brief facts are as under :

(a) On 31st December 2002 Vilas Janrao Sakhare (deceased) was employed with the appellant. Respondent no.1 is father, respondent no.2 (since deceased) is mother, respondent no.3 is the wife and respondent nos.4 and 5 are the minor sons of the deceased.

- (b) On 31st December 2002 the deceased was travelling on a tractor bearing Registration No.MH-31-H-3353 being driven by respondent no.6. Since the vehicle was being driven in a high speed and in a rash and negligent manner, the deceased fell down from the tractor and got crushed under the wheel of tractor. The said tractor was insured with respondent no.7.
- (c) At the time of death the deceased was earning Rs.3,000/- per month by way of salary. Therefore, the respondents – parents and wife moved claim petition against the driver, owner and Insurance company.
- (d) Appellant - respondent no.2 resisted the claim petition by filing his written statement (Exh. 20) and denied that the deceased was travelling in the tractor. However, he did not dispute his ownership over the tractor. According to him, the deceased was a regular drinker and died due to his own negligence. According to him, if the Court comes to the

conclusion that the claimants are entitled for the compensation, then the amount of compensation be saddled on the respondent-Insurance company.

- (e) Respondent – Insurance company also resisted the claim by filing its written statement (Exh. 17) and denied the manner of accident for want of knowledge.
- (f) By way of further pleas, the respondent – Insurance company contended that the deceased was the employee of the appellant and therefore cannot be termed as third party to the vehicle owner. As per provisions of the M. V. Act, Rules framed thereunder and the terms and conditions of the policy, nobody, except the driver can travel in the tractor. Since the deceased was travelling in the tractor in question, his act was totally illegal and amounted to breach of law, Rules and conditions of the policy. In such circumstances, Insurance company is not at all liable to the claim of the claimants.

(g) Upon considering the evidence on record, the learned Chairman, M.A.C.T., Akola, partly allowed the claim petition. It is, this judgment and award, which is under challenge in the present appeal.

3 Mr.S.D.Chopde, learned counsel for the appellant, vehemently submits that the learned Chairman has completely failed to appreciate that the death of the deceased was an outcome of the accident and not because of rash and negligent driving on the part of the driver of the tractor. Since there was no breach of policy on the part of the present appellant, the compensation, if any, ought to have been saddled on the Insurance company. Therefore, the present appeal deserves to be allowed, argued learned counsel.

4 Respondents and their counsel remained absent, when called.

5 The claimant – mother of the deceased has filed her

examination-in-chief by way of affidavit (Exh. 32) and reiterated the averments made in the claim petition. Admittedly, she has no personal knowledge, in as much as, as per her cross-examination, she had not personally witnessed occurrence of the accident. No other witness is examined by the claimants.

6 On the other hand, appellant examined himself by way of affidavit (Exh. 54). In his affidavit, he admitted that at the time of accident, the tractor was driven by his driver i.e. respondent no.6 herein. According to him, since the deceased was a habitual drinker and due to his own negligence, he fell down from the said tractor. Thus, from the evidence it is quite clear that, on the date of incident, the deceased was travelling in the tractor driven by respondent no.6 herein.

7 Similarly, respondent-Insurance company examined Ganesh Vishwanathrao Ingle, a senior clerk from the office of the Deputy R.T.O. Akola, (Exh. 62) who testified that as per their record only driver can occupy the seat of the driver and no other can sit on

the tractor. What is clear from the evidence of this witness is that the offending vehicle i.e. the tractor was only permitted to be driven by the driver only and no other passenger was allowed to sit on the said tractor. In the light of evidence of the appellant, it is clear that the deceased was also travelling in the said tractor.

8 Respondent–Insurance company also examined its Administrative Officer, namely, Chandrashekhar Anant Pandey (Exh. 71) who produced on record Insurance policy with terms and conditions of the offending vehicle viz., MH-31-H-3353 at Exh. 72. As per the said policy, the sitting capacity is one only and that is meant for the driver.

9 From the evidence of senior clerk from the office of the Deputy R.T.O. Akola and as also the Administrative Officer of the Insurance company, it is more than clear that there was breach of policy and therefore, the learned Chairman, M.A.C.T., Akola, was justified in ordering Insurance company first to pay compensation and then recover the same from the appellant

herein. I do not find illegality in the finding arrived at by the learned Chairman, M.A.C.T., Akola.

10 For the aforesaid reasons, I am of the view that there is no perversity or illegality in the finding recorded by the learned Chairman, M.A.C.T., Akola. The appellant has not been able to make out a case for interference. Hence the following order :

ORDER

1. Appeal is dismissed.
2. No orders as to costs.

(V. G. BISHT, J.)

VITHAL
MAROTRAO
CHOULWAR

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