IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.1380 OF 2004

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorized representative and signatory
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
District : Ahmednagar ... **APPELLANT**
(Ori.Resp.No.2)

VERSUS

1. Janabai w/o Dattu Palve,
Age : 26 years, Occu.: Household,

2. Kum. Ambikabai Dattu Palve,
Age : 6 Years,, Occu.: Nil

3. Narayan Dattu Palve,
Age : 4 Years, Occu.: Nil

4. Kum. Savita Dattu Plave,
Age : 1 Year, Occu. Nil

Nos.2 to 4 minors u/g of applicant No.1
All R/o.: Yeli, Tal. Pathardi,
District : Ahmednagar ... (Ori. Claimants)

5. Shaikh Hanif Umar, ... (Ori.Resp. No.1)
Age : 50 years, Occu.: Business,
R/o.: Opp. Tisgaon, Bunglow,
Tal. Pathardi, Dist. Ahmednagar
... **RESPONDENTS**

...

Advocate for the Appellant : Mr. A. B. Gatne
Advocate for Respondent Nos.1 to 4 : Mr. B. N. Palve
Advocate for Respondent No.5 : Mr. R. K. Khandewal

.....

WITH
FIRST APPEAL NO.1381 OF 2004

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorized representative and signatory
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
District : Ahmednagar ... **APPELLANT**
(Ori.Resp.No.2)

VERSUS

1. Smt. Sunita w/o Bhaskar Bade,
Age : 26 years, Occu.: Household,

2. Kum. Manisha Bhaskar Bade,
Age : 6 Years,, Occu.: Education

3. Kum. Sima Bhaskar Bade,
Age : 4 Years, Occu.: Nil

4. Kumar Rahul Bhaskar Bade,
Age : 1 Year, Occu. Nil

Nos.2 to 4 minors through their legal
guardian - mother- applicant No.1

5. Laxman Sitaram Bade,
Age : 60 years, Occu.: Nil

All R/o.: Yeli, Tal. Pathardi,
District : Ahmednagar ... (Ori. Claimants)

6. Shaikh Hanif Umar,
Age : 50 years, Occu.: Business,
R/o.: Opp. Tisgaon, Bunglow, ... (Ori.Resp. No.1)
Tal. Pathardi, Dist. Ahmednagar
... **RESPONDENTS**

...

Advocate for the Appellant : Mr. A. B. Gatne
Advocate for Respondent No.6 : Mr. R. K. Khandewal

...

WITH
FIRST APPEAL NO.1382 OF 2004

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorized representative and signatory
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
District : Ahmednagar ... **APPELLANT**
(Ori.Resp.No.2)

VERSUS

1. Tanabai Trimbak Palve ,
Age : 50 years, Occu.: Household,

2. Trimbak Dublaji Palve
(Died, through L.R. respondent No.1)

All R/o.: Yeli, Tal. Pathardi,
District : Ahmednagar ... (Ori. Claimants)

3. Shaikh Hanif Umar, ... (Ori.Resp. No.1)
Age : 50 years, Occu.: Business,
R/o.: Opp. Tisgaon, Bunglow,
Tal. Pathardi, Dist. Ahmednagar
... **RESPONDENTS**

...

Advocate for the Appellant : Mr. A. B. Gatne
Advocate for Respondent No.1 : Mr. B. N. Palve
Advocate for Respondent No.3 : Mr. R. K. Khandewal

.....

WITH
FIRST APPEAL NO.1383 OF 2004

United India Insurance Co. Ltd.,
Through it's Divisional Manager and
authorized representative and signatory
Ahmednagar Divisional Office,
Kisan Kranti Building, Ahmednagar,
District : Ahmednagar ... **APPELLANT**
(Ori.Resp.No.2)

VERSUS

1. Smt. Tulsabai Madhav Palve,
Age : 50 years, Occu.: Household,

2. Smt. Nirmla Bhaginath alias
Bhagwan Palve,
Age : 21Years,, Occu.: Household

Both R/o.: Yeli, Tal. Pathardi,
District : Ahmednagar ... (Ori. Claimants)

3. Shaikh Hanif Umar, ... (Ori.Resp. No.1)
Age : 50 years, Occu.: Business,
R/o.: Opp. Tisgaon, Bunglow,
Tal. Pathardi, Dist. Ahmednagar
... **RESPONDENTS**

...

Advocate for the Appellant : Mr. A. B. Gatne
Advocate for Respondent Nos.1 & 2 : Mr. D. R. Jaybhar
Advocate for Respondent No.3 : Mr. R. K. Khandewal

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CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 19/12/2022
PRONOUNCED ON : 15/02/2023

....

JUDGMENT :

1. These appeals are filed by the appellant - insurance company, who is the original respondent No.2 in MACP No.92 of 1998, MACP No.65 of 1998, MACP No.74 of 1998 and MACP No.66 of 1998, challenging the judgments and awards in the aforesaid claim petitions passed by the learned Motor Accident Claims Tribunal, Ahmednagar (hereinafter referred as to 'the learned Tribunal) on 19/06/2004. The aforesaid motor accident claim

petitions were filed by the respective dependents of four deceased persons mentioned therein.

2. According to the claimants in all these claim petitions, deceased Dattu Trimbak Palve, Bhaskar Laxman Bade, Sahadu Palve and Bhaginath @ Bhagwan Palve were proceeding in a Tempo bearing registration No. Mh-16-9543 towards Washi, New Bombay for selling their onions on 18/12/1997. However, at about 3.00 a.m. on that day on Pune - Mumbai National Highway No.4, near H.Q.C. Corner, the said Tempo tumbled down from the bridge and the aforesaid four persons, who were respective owners of their onions, died in the said accident.

3. The appellant - insurance company of the Tempo, has filed these appeals on the ground that the driver of the said Tempo was not holding licence for driving transport vehicle but was having licence to drive LMV non-transport vehicle and that there is no evidence on record that the deceased were travelling in capacity of the owners of the onion bags. However, during the course of argument, the learned counsel for the appellant - insurance company preferred not to raise the aspect of the driver being not having licence to drive transport vehicle as a ground of the appeals. As such, now there remains only one ground for challenging the appeals that in absence of evidence, the deceased cannot be treated as owners of the goods and they were gratuitous passengers and therefore not entitled to seek compensation under the terms and conditions of the policy.

4. The learned counsel for the appellant - insurance company submits that since there is no evidence on record to show that the

deceased were travelling in the offending Tempo being the owners of the goods, they are to be treated as gratuitous passengers only and therefore, not covered under the policy of the said Tempo. He pointed out that the 7/12 extracts brought on record clearly indicate that there was no onion crops in the lands belonging to the deceased for the relevant period. According to him, in absence of such evidence, it cannot be construed that the deceased were travelling in the capacity of owners of the goods and thus they were merely gratuitous passengers. As such, he prayed for exoneration of the appellant - insurance company from the liability of paying compensation to the claimants. In addition to submissions at bar, he relied upon the case of ***National Insurance Company Co. Ltd. vs. Cholleti Bharatmata and others, (2008) 1 SCC 423.***

5. On the contrary, the respective learned counsel for the claimants in all these appeals strongly opposed the submissions made on behalf of the appellant - insurance company. They submitted that the learned Tribunal has rightly decided the claim petitions by awarding certain compensations to their respective claimants. According to them, the claimants have discharged the burden of proving that the deceased were travelling in the offending Tempo in capacity of owners of goods and therefore, they are rightly covered under the policy. They pointed out that the investigating officer has in fact stated that goods / onions were belonging to the deceased persons and therefore, the citation relied upon by the learned counsel for the appellant - insurance company is not at all applicable. In the alternative, it is submitted by them that if the appellant - insurance company is exonerated

from the liability of paying compensation, the pay and recover order can be passed.

6. To the alternate submission of the learned counsel for the claimants, the learned counsel for the appellant - insurance company submits that even the pay and recover order cannot be passed for persons, who were passengers in goods vehicle.

7. With the assistance of the learned counsel for the appellant-insurance company and the respective counsel for the respondents- claimants, I have gone through the impugned judgments alongwith record and proceedings of each of the claim petitions.

8. It is significant to note that though the appellant - insurance company has raised the objection that the driver of the aforesaid Tempo was not holding valid licence to drive transport vehicle, but the judgments itself indicate that he was having LMV non-transport licence. Moreover, the learned counsel for the appellant - insurance company has also preferred to waive this ground and proceeded only on the ground that in absence of specific evidence about ownership of the deceased persons over the onion bags, which were being carried in the offending Tempo at the time of accident. The deceased were gratuitous passengers and therefore not covered under insurance policy of the Tempo. There is no dispute about the computation of the compensation and it is also not disputed that the offending vehicle was insured with the appellant - insurance company on the day of accident. As such, a crucial question, which is to be decided in these appeals, as to

whether the deceased were travelling in the offending Tempo being the owners of goods or they were merely gratuitous passengers.

9. The learned counsel for the appellant - insurance company vehemently argued that the deceased persons in all these matters, were not travelling as the owners of goods since the claimants could not prove that the deceased were travelling to Washi market to sell their onion crop. He pointed out that the claimants have also produced 7/12 extracts of the lands, wherein the deceased were also having shares. However, none of these 7/12 extracts indicates that there was onion crop in those lands at the relevant time i.e. at the time of accident. He thus, claimed that the deceased, therefore, were only gratuitous passengers in goods vehicle and therefore, the appellant - insurance company was not at all liable to cover their risk under the policy of the offending Tempo.

10. On bare perusal of the policy on record, it is evident that the tempo in respect of which the policy has been drawn, is goods vehicle. Therefore, there is no question of carrying passengers either fare paying or gratuitous in the same. As such, the passengers were not at all covered under the said policy and therefore, there was no liability of appellant - insurance company to cover the risk of such passengers. It is clearly mentioned in the said policy itself that use of carrying passengers in the vehicle except employees (other than driver) not exceeding six in numbers come under the preview of the Workmen's Compensation Act, 1923. This means carrying of passengers was totally banned. It is

not disputed that the Tempo involved in the accident was goods vehicle and therefore, risk of passengers were not covered.

11. It is significant to note that prior to the amendment of 1994 in Motor Vehicles Act, Section 147 did not permit owner of the goods or his authorized representative to be carried out in goods vehicle. However, after the amendment in the year, 1994 the Section 147 of the Motor Vehicles (amendment) Act, 1994 reads as thus :

> *"147. Requirements of policies and limits of liability :- (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -*
>
> *(a) * * * **
>
> *(b) insures the person or classes of persons specified in the policy to the extent specified in sub-section(2) -*
>
> *(i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person, including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;*
>
> *(ii) * * * *"*
>
> *(emphasis supplied)*

12. As such, after such amendment, the category of any person includes owner of the goods or his authorized representatives to be carried out in the goods vehicle. It is also settled thereafter that there was no requirement of any additional premium being paid to cover the risk of such owner of the goods or his authorized representative. Thus, in the present matters, the deceased would

be covered under the policy only if it is proved that they were owners of the goods at the time of accident. The appellant - insurance company is denying that the deceased were owners of the onion bags, which were being carried in the offending Tempo. From the petitions itself it can be seen that it is the specific case of all the claimants that the deceased persons were proceeding towards Washi market for selling their bags of onions. The evidence of API Mr. Suresh Jadhav is also disclosing that all these four deceased persons were travelling in the said Tempo as owners of the onions loaded therein. The contents of FIR definitely support the said evidence. Further, the spot panchanama also indicates that after the accident, the onions were found lying at the spot. Thus, the contentions of the claimants that the deceased persons were travelling in the aforesaid Tempo being the owners of onion bags is well supported by the evidence of investigating officer and the documents such as FIR and spot panchanama.

13. It is extremely important to note that the appellant - insurance compensation had in fact claimed that the deceased were not the owners of goods. Thus, the burden to prove that the deceased were travelling in the Tempo as passengers either fare paying or gratuitous, was upon the appellant - insurance company itself. It is extremely important to note that the appellant-insurance company did not examine any witness to prove otherwise. Moreover, the appellant - insurance company also did not file any documentary evidence in support of its contention. The learned counsel for the appellant - insurance company only relied upon 7/12 extracts filed by the respective claimants on record. He pointed out that there is no entry of onion crops.

Admittedly, all these 7/12 extracts show that there was no onion crop in the field of deceased persons at the time of accident. However, it is settled position that entries in 7/12 extract are made only for fiscal purpose and cannot be used as a strict proof of the facts. As such, merely in absence of entries of the onion crops in those 7/12 extracts, the other evidence on record in form of testimony of investigating officer, documents on record such as FIR and spot panchanama, cannot be ignored. Further, this being beneficial legislation, a concept of strict proof as seen in the criminal matters, cannot be applied in the compensation cases under Motor Vehicles Act. Therefore, the appellant - insurance company merely on this ground, cannot discharge its burden to prove that the deceased persons were only passengers and not owners of the goods.

14. The learned counsel for the appellant-insurance company has heavily relied upon the judgment of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Cholleti Bharatamma and others*** (supra), wherein liability in respect of owner of goods or his authorized representatives is discussed. It is also observed in the said judgment as to who is covered as owner of goods or his authorized representatives. Various tests are also given to determine the mode of travel and the number of persons so covered. Though there are certain observations in the aforesaid judgment that how the passengers in goods vehicle are not covered under the insurance policy of such vehicle, but in the instant matters, it has been already transpired to me on the basis of evidence on record that the deceased persons were the owners of the goods, and being carried in the offending Tempo. Thus, there

is no such case in the instant matters that the deceased were either fare paying passengers or gratuitous passengers.

15. It is observed in the said judgment that owner must be the person who travels in the cabin of the vehicle and not with the goods so as to be covered under Section 147. Admittedly, the Hon'ble Apex Court in para 19 of the judgment has made observation that *"it is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle"*. Thus, the learned counsel for the appellant - insurance company strongly submitted that all the deceased persons were travelling with goods in the back portion of the Tempo and not in the cabin. However, a judicial note can be taken that in the cabin of offending Tempo there was only space for driver and cleaner and therefore, at the most one person could have been accommodated in the cabin. It was not expected that all the four deceased persons were supposed to sit in the cabin only for getting entitlement for compensation being the owners of goods. Further, there is no restrictions in the Motor Vehicles Act that the owners of goods cannot travel in the back side portion of the goods vehicle when there is no scope for them to travel in the cabin only. The same opinion has been expressed by the learned ***Madras High Court in the case of Manjula Vs. M. Sakthivel, under judgment dated 8th October, 2018***. Further, the High Court of Madras also followed this observation in its subsequent judgments in the cases of ***Divisional Manager vs. Rukhmani and the Branch Manager vs. Elumalai***. It has been held by the Madras High Court in para 26 and 27 of the said judgment as under :

"26. The Tribunal has failed to consider Section 147(1) of the Motor Vehicles Act and Rule 236 of Tamil Nadu Motor Vehicles Rules and IMT :37-A. As per the above provision, the owner of goods, even if he travels in the backside of the goods vehicle alongwith his goods, is entitled to claim compensation from the insurance company for the injuries and his legal heirs are entitled for the compensation from the insurance company for death.

27. For the above reason, the award of the Tribunal exonerating the second insurance company is set aside. The Second respondent insurance company is liable to pay compensation to the appellants.

16. It is extremely important to note that while observing this, it had also discussed the judgment of the Hon'ble Apex Court in the case of ***National Insurance Co.Ltd. vs. Cholleti Bharatamma*** (supra), which has been relied upon by the appellant - insurance company in the present matters.

17. In the instant case, the appellant - insurance company could not lead any evidence to prove that the deceased were not owners of the bags of onion goods and therefore, the judgment in the case of ***National Insurance Co.Ltd. vs. Cholleti Bharatamma*** (supra) relied upon by it, is not helpful. In view of the same, I do not find any substance in these appeals. There is no dispute in respect of quantum of the compensation awarded by the learned Tribunal and hence, the appeals are dismissed.

(SANDIPKUMAR C. MORE, J.)

VS Maind/-