IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2554 OF 2016

M/S Oriental Insurance Co. Ltd., having its registered and Head Office at 10 Asafali Road New Delhi Branch Office at Dhule and Division Office at Dr. Rajendra Prasad Road, Harshwardhan Building Adalat Road Aurangabad 431 005 through its Senior Division Manager. **...APPELLANT**
(Orig. Respondent)

V E R S U S

1. Hirabai Ashok Patil (Wagh)
Age; 39 years, Occ; Household,
R/o; Saitale, Tq. Sakri, Dist. Dhule.

2. Ashok Gatlu Patil,
Age; 43 years, Occ; Owner and Driver,
R/o; Saitale Tq. Sakri, District; Dhule.

3. Premchand Chokaram Gaud,
Age; Adult, Occ. Owner,
R/o; Kasik Commercial Complex,
Near State Bank, Nasik Road, Nasik. **...RESPONDENTS.**

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Advocate for the Appellant : Mr. Vinayak N. Upadhye
Advocate for the Respondent No. 1 : Mr. A.D. Pawar

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CORAM : KISHORE C. SANT, J.

Date of Reservation : 06.09.2023
Date of Pronouncement : 06.11.2023

ORDER :

1. This appeal is filed by the Insurance Company challenging judgment and award passed by the learned Member, MACT, Dhule, in MACP No. 418 of 2011 dated 16.03.2016. The learned Member by way of judgment allowed the MACP with costs directing respondent Nos.1 to 3 in the claim petition to pay to the Claimant/respondent No. 1 herein Rs. 5,36,000/- inclusive of No Fault Liability with interest @ 8% p.a. from the date of petition till the same is deposited in the office of the Tribunal. Further directions were given for grant of Rs. 4,00,000/- to be kept in Fixed deposit in the name of petitioner for next 5 years with liberty to withdraw interest accrued from time to time.

2. The parties are referred to as per their original status in the claim petition. The petitioner happens to be mother of deceased Vijay Ashok Patil. It is the case that on 11.06.2011 the deceased boarded on a vehicle i.e. the MAX Pick-up Van bearing Registration No. MH/16/Q/3395 owned by his father. The vehicle was used to

carry agricultural goods. The deceased was assisting his father in loading and unloading goods from the vehicle. While returning back from the village Chardi, the vehicle was suddenly stopped as one buffalo came in front of the vehicle. The vehicle turned turtle in which the deceased sustained fatal injuries. Accordingly crime was registered for the offence punishable under Sections 279, 337, 338 and 427 of the Indian Penal Code and under Sections 184, 134/177 of the Motor Vehicles Act at Nijamapur Police Station against the driver.

3. In the claim petition it is averred that the deceased was 20 years old. He used to assist his father in carrying goods in the vehicle. The compensation of rs. 5,00,000/- was claimed. Respondent No. 1 is owner of the vehicle and respondent No. 2 is earlier owner of the said vehicle. The driver of the vehicle did not appear. The claim was resisted only by respondent No. 3 the Insurance Company, present appellant. All the averments in the claim petition are denied. It is further the case of the insurance company that the vehicle was goods carrying vehicle. At the time of accident there were unauthorized passengers in the vehicle. The deceased was travelling with his father and thus, he cannot be said

to be a third party. It is breach of condition of policy and therefore, the insurance company is not liable to indemnify the owner.

4. The learned Member of the Tribunal held that the deceased was of 20 years of age at the time of his death. His notional income is taken to Rs. 3,000/- p.m. Future prospectus are considered at the rate of 50%. If 50% amount is deducted towards personal expenses as the deceased was unmarried. He further granted funeral expenses etc. It is held that the deceased cannot be said to be occupant of the vehicle, neither he was a fair pay passenger. The Tribunal further held that since the deceased was covered in driver & Cleaner as he used to assist his father in the goods vehicle, he cannot be said to be a third party. The policy was comprehensive policy, as such liability of the deceased covered under the policy.

5. Mr. Upadhaye, the learned Advocate for the insurance company argued that when an accident took place, there were 7 to 8 passengers in the vehicle. The deceased was son of the owner and thus cannot be said to be a third party. The insurance coverage was only to the driver and the deceased was not covered under the policy. Thus, the insurance company is not liable to pay

compensation. The son of the owner cannot be said to be a driver or employee. But he was clearly an unauthorized person. He further argued that if at all the deceased was working as employee then the claim ought to have been made under the Workmen's Compensation Act.

6. He relied on the following judgments :

a) ***2007 AIR (SCW) 3591*** *– Oriental Insurance Co. Ltd. Vs. Premlata Shukla and Ors.*

b) ***2002 AIR (SCW) 5259*** *– New India Assurance Company Vs. Asha Rani and Others.*

c) ***AIR 2013 SC 1125*** *– Sanjeev Kumar Samrat Vs. National Insurance Co. Ltd., and Others.*

7. The learned Advocate Mr. Pawar argued that the sitting capacity of the vehicle was 2 + 1. The policy was a package policy. It covered driver and cleaner. When the policy was comprehensive, the policy covered driver and cleaner and as the deceased was helping his father and thus, he was covered under the policy. He submits that it has come in the evidence that the deceased was helping his father in loading and unloading goods. The rash and negligent driving is proved by the driver and the Insurance Company is liable to indemnify the owner. He submits that the

package policy is always comprehensive policy. The learned Member of the Tribunal has rightly passed the award. The deceased cannot be said to be only an occupant or a person paying fair. He further argued that under Section 165 of the Motor Vehicles Act the claimant has an option either to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. He relied upon the following judgment :

> *a)* ***2022 11 SCC 758*** *– Mangilal Vishnoi Vs. National Insurance Company Limited and Others.*
>
> *b)* ***Manu/MH/2056/2017*** *- The Oriental Insurance Co. Ltd. Vs. Pushpa and Ors.*
>
> *c) Manu/MH/1595/2015 Balaji Constructions Vs. Chandrakala Jaihind Bhure and Ors.*

8. By keeping in view the above submissions, this Court has considered the judgments cited by the parties. In the case of **Oriental Insurance** (supra) the Hon'ble Apex Court considered that the contents of the FIR required to be treated to be proved. There is no dispute about the same.

9. In the case of **New India** (supra) it is held that even in the goods vehicle the owner of the goods or his authorized representative with the Goods are covered. In that case the person

was found traveling in goods vehicle without authority as a gratuitous passenger, in that case it was held that the insurer is not liable to pay the compensation.

10. In the case of **Sanjeev Kumar Samrat** (supra) it was the case under Workman's Compensation Act. In that case the policy was issued giving coverage to 6 employees. In the facts of the case the truck was hired for carrying Iron Rod and Cement by one Durga Singh. He was traveling along with two of his labours. The vehicle met with an accident. The labours sustained injuries and succumbed to injuries. The Tribunal held that the legal representatives of that deceased were entitled to receive compensation. The High Court also confirmed the said judgment. The Hon'ble Apex Court considering Section 147 held that the insurance company was not liable to make payment. It was held that the vehicle was goods carriage vehicle. The employee has to be covered by statutory policy. Only the injuries to a person including owner of the goods or his authorized representative are covered under the policy. The policy does not cover all kinds of the employees by considering Act of 1923.

11. Coming to the judgment relied upon by the claimants. In

the case of **Mangilal** (supra) the Tribunal had granted compensation. The High Court had held that in the policy only the cleaner was covered, whereas the deceased was covered and a labour was not covered under the policy. In that case the Hon'ble Apex Court considered that the duty to the labourer and cleaner is inter changeable. The other employees engaged in loading and unloading activities by putting extra charge were also held to be entitled to receive compensation from the insurance company. There cannot be a distinction between a labour and a cleaner as is held by the Hon'ble Court. In this case also this Court finds that though the deceased was a son of the owner but he was helping in work of loading and unloading of goods carriage and thus was covered under policy.

12. In the case of **Oriental Insurance Ltd**. (supra), this Court considered the case whereby a person in the Cabin died and the claim petition of the dependents was allowed. The judgment of the MACP was confirmed by dismissing an appeal.

13. In the case of **Balaji Construction** (supra) it is held that the insurance Company can undertake coverage to the persons engaged in traveling vehicle and the persons engaged as conductor

and cleaner and it is a goods carriage vehicle and persons required to be carried in the vehicle. It was the case under the Workmen's Compensation Act. In that case the Commissioner had exonerated the insurance company. This Court allowed claim holding that the insurance company is liable to pay compensation.

14. Coming to the submission that the deceased was not covered under the policy, this Court finds that in the policy premium is charged for Driver, Contractor, Cleaner – IMT-40 (Indian Motor Tariff-Endorsement). This Court has already held that the deceased was helping in lodging and unloading goods in the vehicles, he is covered under the policy as cleaner. The learned Advocate for the Company has invited attention of this Court to IMT-40. However, no case is made out before the Tribunal to show that the claimant is not entitled to compensation in view of endorsement -40 of IMT.

15. After considering all these judgments, this Court finds that the deceased was helping to his father in loading and unloading goods is not disputed. The dispute is only as to whether such person is covered under the policy or not. For that purpose, though the learned Advocate for the Insurance Company invited

attention of this Court to IMT 40 about the liability to pay driver or conductor/cleaner. This Court finds that it need not to be considered in the facts of this case. The amount if any lying in this Court be given to the Claimant along with interest if any. There is no merit in the appeal, therefore, the appeal is liable to be dismissed and the same is dismissed. No order as to costs.

(KISHORE C. CHANT)
JUDGE

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