



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2321 OF 2018

M/s. I.C.I.C.I. Lambord Insurance
(Summons to be served on Legal Manager
Branch Office, Zeneth House Keshavrao
Khade Marge, Mumbai) and
Division at Samarth Nagar, Up Karnataka
Bank Ltd., Aurangabad 431001.
Through it's Legal Manager
Mr. Ravi Deeliprao Narwade

.... Appellant

Versus

1. Smt. Sugarbi Khalil Shaikh,
Age : 40 years, Occu. : Household,
R/o Varegaon, Tq. Phulambri,
Dist. Aurangabad.
2. Shaikh Wajed S/o. Sk. Khalil,
Age : 14 years, Occu.: Education,
U/g. of claimant No.1
R/o. As above.
3. Shaikh Najed d/o. Sk. Khalil
Age : 12 years, Occu.: Education,
R/o. As above

Respondent Nos.2 and 3 Minors
represented through No.1 above.

4. Shri Bandu Taterao Tandale
Age: 32 years, Occu.: Driver,
R/o. Ganori, Tq. Phulambri,
Dist. Aurangabad.
5. Shri Gajanan Eknath Bakhle
Age : Major, Occu.: Tractor owner/
Business,
R/o. Mhasla, Tq. Phulambri,
Dist. Aurangabad.

.... Respondents

.....
Mr. V.N. Upadhye, Advocate for the Appellant
Mr. R.B. Dhakane, Advocate for Respondent Nos.1 to 3
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 13th DECEMBER, 2023

JUDGMENT :

1. This appeal at the instance of Insurance Company challenges the judgment and award passed by Motor Accident Claims Tribunal, Aurangabad, in Motor Accident Claim Petition No.498 of 2015.

2. Brief facts leading to the first appeal are as follows:

Respondent Nos.1 to 3/claimants filed above claim petition contending that deceased Khalil Jainoddin Shaikh was working as agricultural labour with Babasaheb Dadarao Jadhav on Rs.75,000/- p.a. salary. On 08/04/2015 at about 10.30 a.m., he was cleaning the *Nali* for making road for the Tractor to go to the field situated within the limits of Waregaon village. Said Tractor overturned and fell on the deceased. Due to the injuries received in the said accident, deceased Khalil expired at M.G.M. Hospital, Aurangabad. At the time of accident, Khalil was 45 years old. They therefore claimed compensation of Rs.13,05,000/- from respondent Nos.1 and 2 i.e. driver and

owner of the Tractor and Respondent No.3 insurance company with whom the Tractor was insured.

3. Owner and driver of the Tractor opposed the claim by filing written statement. They admitted that death of deceased was caused due to injuries received in the accident in question. They admitted that deceased was cleaning the *Nali* for making road in the field of one Mr. Pawar, for passing of the Tractor in question. The Tractor overturned and fell on the person of deceased due to which, he received head injury. They contended that Tractor was insured with respondent No.3 Insurance Company and the driver/respondent No.1 was having valid driving licence at the time of accident. They have denied that accident occurred due to rash and negligent driving of the first respondent.

4. Appellant/Insurance Company resisted the claim by filing written statement contending that driver/first respondent was not having valid driving licence. At the time of accident deceased was sitting on the mudguard of the Tractor. Terms and conditions of insurance policy of the Tractor were breached and the Tractor was not having valid permit.

5. After assessing the evidence brought on record, the Tribunal allowed the claim and awarded compensation of Rs.12,85,000/- inclusive of NFL amount, along with interest @ 9% p.a. from the date of application till realization of the amount. Respondent Nos.2 and 3 were jointly and severally held liable to pay compensation. Being aggrieved by the said judgment and award the Insurance Company has filed the present First Appeal.

6. Learned advocate for Insurance Company assailed the impugned judgment and award on the ground that as per FIR (Exhibit 22), at the time of accident, deceased was sitting on mudguard of the Tractor. Therefore, there was breach of terms and conditions of policy of the Tractor, and hence, Insurance Company is not liable to pay compensation. According to him, the Tribunal failed to appreciate this aspect in proper perspective and erred in holding the Insurance Company jointly and severally liable to pay compensation.

7. Learned advocate for respondent Nos.1 to 3/claimants by relying on *Halappa Vs. Malik Sab, Lex (SC) 2017 12 30*, supported the impugned judgment and award.

8. Heard the learned advocate for the appellant and respondent Nos.1 to 3 at length. None appears for respondent Nos.4 and 5. Perused the record.

9. There is no merit in the submissions of the learned advocate for the appellant that deceased was sitting on mudguard of the Tractor, and therefore, there is a breach of terms and conditions of the policy and hence Insurance Company is not liable to pay compensation. It is a matter of record that PW-3 Nanasaheb S. Jadhav, who is an eye witness to the said accident, deposed that he asked deceased Khalil to clear the *Nali* for making road for the Tractor. The deceased went at the spot and was cleaning the *Nali* and the Tractor driver started his Tractor and proceeding on the said road, at that time, one tyre of Tractor came in the *Nali* and Tractor turned, turtle and fell on the person of deceased who was clearing the said *Nali*, and due to this accident, deceased sustained grievous head injury and bodily injuries.

DW-1 Bandu Tandale, driver of the Tractor, has deposed before the Tribunal that deceased Khalil was clearing the *Nali*, at that time, he started the Tractor and proceeded from the said *Nali*, but one tyre of Tractor went inside the *Nali* and the Tractor overturned and fell on the body of deceased

Khalil, who was clearing the said *Nali*, and due to this accident, deceased sustained grievous head injury. He tried to control the Tractor but failed to do it. He has further stated that Phulambri Police registered the false offence against him vide Crime No.I-54/2015 under Sections 279,338, 504-A of the Indian Penal Code. He has categorically denied the suggestion of the Insurance Company that at the time of accident deceased was sitting on mudguard of the Tractor.

10. Insurance Company examined Head Constable Mr. Bhalchandra Kasote to prove F.I.R. bearing Crime No.54/2015, which was lodged by brother of deceased namely Shaikh Idris Shaik Jainoddin. He has stated that he investigated F.I.R. at Crime No.54/2015 under Section 304-A, 279 and 338 of the Indian Penal Code, and it was transpired in the investigation that accident occurred due to rash and negligent driving of the first respondent.

Insurance Company has also examined Ravi Narwade, Manager, Legal (claims).

11. True Copy of general diary (Exhibit 56) No. 98/2015 dated 08/04/2015 is brought on record, wherein it is recorded that at 12.15 Hrs. A.D. No. 19/2015 under Sections 174 of the

Code of Criminal Procedure is registered on the information of Police Naik Mr. B.K. Shah, *Buckle* No.1295 of CIDCO Police Station, Aurangabad and deceased Khalil expired in an accident at 10.30 a.m. on 08/04/2015, while working in the filed as the Tractor overturned.

12. In the light of the evidence of eye witnesses i.e. PW-3 Nanasaheb S. Jadhav, DW-1 Bandu Tandale as well as the documents i.e. general diary (Exhibit-56), spot *panchanama* (Exhibit-23), Inquest *panchanama* (Exhibit-24) and post-mortem report (Exhibit-25), there is sufficient evidence on record to show that while deceased was cleaning the *Nali* to make road for the Tractor, the Tractor was started by the driver and it overturned in the *Nali* and fell on the person of deceased Khalil. The Tribunal is justified in relying on the ocular evidence of eye witnesses and the documentary evidence in support of the claim.

13. In view of the above evidence, there is no merit in the submission of the learned advocate of the appellant that at the time of accident, deceased was sitting on mudguard of the Tractor, which is clear from the F.I.R. at Crime No.54/2015. Admittedly, F.I.R. was lodged by brother of deceased, who did

not witness the accident. In view of evidence of eye witnesses, the contents of F.I.R. cannot be relied upon.

14. The Tribunal while allowing the claim, has rightly disbelieved the narration in the F.I.R. and relied on the version of eye witnesses of the accident.

15. for the aforestated reasons, there is no merit in the first appeal, and the same is therefore dismissed. No order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane