IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1071 OF 2022

United India Insurance Co. Ltd.,
Through its Divisional Manager,
Divisional Office, Aurangabad.

.. APPELLANT

VERSUS

1. Rekha w/o. Santosh Londhe,
   Age 34 years, Occ. Household,

2. Aruna Santosh Londhe,
   Age 17 years, Occ. Education,

3. Amarnath Santosh Londhe,
   Age 15 years, Occ. Education,

4. Kiran Santosh Londha,
   Age 13 years, Occ. Education

Nos. 2 to 4 are minors under guardianship
of respondent No.1 their real mother.

5. Mahadeo Limbaji Londhe,
   Age 69 years, Occ. Nil.

6. Parvati Mahadeo Londhe,
   Age 66 ears, Occ. Household,
   All R/o. Dhaba, Tq. Kallam
   Dist. Osmanabad
   At present Sambhaji Nagar,
   Diksal, Kallam, Tq. Kallam
   Dist. Osmanabad.

7. Ganesh s/o. Tukaram Shelke,

Age major, Occ. Business,
R/o. Nandanvan Colony,
Ambad Road, Jalna, Dist. Jalna.

Mr. Arun G. Kanade, for the appellant.
Sambhaji Wakure, Advocate for respondent Nos. 1 to 6.
Mr. B.R. Kedar, Advocate for respondent No.7.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 7TH JULY, 2023

JUDGMENT :-

Appellant/original respondent No.2 Insurance company has approached this court under Section 173 of the Motor Vehicles Act, thereby impugning the judgment and award dated 3.4.2019 passed by the Motor Accidents Claim Tribunal, Osmanabad in Motor Accident Claim Petition No. 230 of 2015.

2. The respondents Nos. 1 to 6 are dependents of the deceased Santosh who died in an accident dated 31.3.2015. While he was proceeding on his motor cycle, the tanker bearing Registration No.MH-04/CU-4911 owned by the respondent No.7 and insured with the appellants, dashed against the motor-cycle. The deceased had suffered fatal injures in the said accident.

3. The contention of the claimants is that deceased was 33 years of age and doing private service as a social worker with varouis institutions and earning around 30,000/- to 35,000/- p.m. According to the claimants, they were depending on the income of the deceased. Since the accident occurred due to fault on the part of the tanker driver, the

owner and insurer of tanker are responsible to pay the compensation.

4. The tribunal had issued notice to the respondents. Respondent No.1 owner of the vehicle as well as appellant insurer filed written statement and denied material averments. The appellant/insurer took the stand that the tanker driver was not holding valid and effective licence. As such, there is a breach of condition of the policy. The material particulars pleaded in the claim petition were denied by the respondents in the written statement.

5. The Tribunal had framed the issues at Exh.21. The claimant No.1 Rekha deposed at Exh.26 and relied upon the documentary evidence. Appellant insurance company filed on record copy of the insurance policy. However, no evidence is recorded. The learned Tribuanal considering the pleadings of the parties and evidence on record passed an award of Rs. 38,62,000/- alongwith interest @ 7 % p.a holding that respondent Nos. 1 and 2 are liable to pay the compensation.

6. Mr. A.G. Kanade, learned counsel appearing for the appellant vehemently argued that appellant insurer had taken specific defence in the written statement that the driver of the insured tanker was not holding a valid and effective driving licence. He invites attention of this court to the provisions of Section 14 of the Motor Vehicles Act, 1988 as well as Rule 9 of the Motor Vehicles Rules, 1989 to contend that the person driving goods carriage with dangerous or hazardous goods, in addition to holding licence must have a requisite authorization for driving vehicle of specified class, i.e. hazardous goods. He would submit that the documents on record shows that at the time of accident the

vehicle was used for carriage of hazardous goods. Therefore, the plea of the insurer on the point of breach of policy ought to have been accepted in terms of Section 149(2) of the Motor vehicles Act and the insurer ought to have been exonerated.

7. Mr. Kanade would further urge that the Tribunal has erroneously accepted the excessive income of the deceased and passed an exorbitant award.

8. The learned counsel appearing for the respondent Nos. 1 and 2 have opposed the contention made on behalf of the appellant. Mr. Kedar, learned advocate appearing for the original claimants submits that although the insurer had taken plea in the written statement regarding breach of the policy, no evidence has been brought on record to establish such defence. He would submit that the insurer may succeed in his defence only when it brings necessary evidence in tune with the averments in the written statement. Mere contention in the written statement would not be sufficient to accept the defence of the insurer.

9. It is trite that if the insurer raises a defence of breach of policy it would be under obligation to discharge the burden to prove the same. In the present case, the written statement filed by insurer would show that the general defence that the driver of the insured tanker was holding licence has been raised. However, except such plea, no other material is brought on record. None of the documents, admitted in evidence shows that the tanker in question was registered for carrying hazardous goods which would mandate the requirement of a specific endorsement on the driver's licence. When the insurer has taken a

technical defence, it was for it to prove that the vehicle itself was registered and adopted for carriage of hazardous goods. Unless such plea is established, further question, as to whether the driver was holding requisite licence would not arise for consideration. Even otherwise, the insurer has not recorded evidence from transport authority to show that driver of the vehicle was not authorized for driving the vehicle carrying hazardous goods.

10. Although there cannot be any dispute with the proposition of law that is put forth by the learned advocate Mr. Kanade, and the fact that the provisions of the motor vehicle Act and rules mandate the requirement of a specific endorsement for driving the vehicle of hazardous goods, in the facts of the case, the insurer has failed to take specific plea in the written statement in this regard and consequently, lead the requisite evidence. In this background, there is no scope to accept the contention of the insurer on the point of breach of policy.

11. Pertinently, the submissions advanced by Mr. Kanade on the point of quantum are not made part of grounds in appeal memo. Even otherwise, perusal of the reasoning adopted by the Tribunal while working assessment of compensation depict that award is based on the settled principles of law and the factual aspect that has been established before the Tribunal.

In the light of the above observations, there is no merit in the appeal. Same is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-