

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**FIRST APPEAL NO. 176 OF 2001
WITH
FIRST APPEAL NO. 177 OF 2001**

Babu Daji Kadam

Age : 60, Occu : Agriculture

R/o. Kedarwadi, Tal. Wala, Dist. Sangli

.... Appellant

Versus

1. The Oriental Insurance Co. Ltd.

L.I.C. Building in front of Collector Bungalow,
Sangli

2. Arvind Balu Niprul

Age : 49, Occu : Labourer

R/o. Kosegaon, Tal. Walva, Dist. Sangli

3. Sambhaji Rajaram Khot

Age : 40, Truck Driver

R/o. Pharnewadi, Tal. Walva, Dist. Sangli

.... Respondents

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Mr. Yogesh M. Birajdar i/b. S. D. Dharmadhikar, Advocate for the Appellants in both the Appeals.

Ms. Poonam Mital, Advocate for Respondent No.1 in both the Appeals.

Mr. P.P. Kutkar i/b. Sudatta Patil a/w. P. R. Patil, Advocate for Respondent No.2 in both the Appeals.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. Both these appeals are out of same Judgment and Order passed by the Motor Accident Claims Tribunal, Sangli (for short “**the Tribunal**”).

Hence, I am deciding these appeals by this common Judgment as well as issues involved in these appeal are the same i.e. pay and recovery order passed by the Tribunal.

2. It is the contention of learned counsel for the appellant owner of insured vehicle that the Tribunal while deciding the Claim Petition in paragraph No.18 of its order has observed that there was no breach of terms and condition of the Insurance policy. Hence, owner cannot be held liable but in operative part of the order, the Tribunal has directed the Insurance Company to pay the amount and recover it from the appellant which is not proper. Hence, requested to allow the appeals.

3. It is the contention of learned counsel for Insurance Company that there was breach of terms and conditions of Insurance policy as appellant was carrying sugarcane in the insured vehicle i.e. tractor / trailer which was not as per the terms and condition of Insurance policy on that basis the Tribunal has passed the order which is legal and valid and no interference is required in it.

4. Learned counsel for claimants submits that appropriate order be passed.

5. I have heard both the learned counsel. Perused the Judgment and Order passed by the Tribunal. It is the claimant's case that on 31.05.1990 when deceased Sudha and Malan Niprul were walking on road

of Bhairewadi to Kasegaon at that time, near land of Pawar, a tractor dashed to tractor bearing No. MXW-455 having trolleys No. MTL-3168 & MTL-3169 due to said dash, trollys turned turtle and it fell on the persons i.e. Sudha and Malan in which both succumbed to the injuries.

6. It is the contention of learned counsel for respondent - Insurance Company that the tractor had no permission to carry sugarcane in the trailers. While dealing with this issue, the Tribunal has observed that vehicle was not used for the purpose for which it was insured but the contract between the insured and insurer is not binding upon the third party. If the persons traveling in the goods vehicle had caused any injury, the matter could have been different. The person who died were not traveling and they were pedestrian. In such circumstances, breach of terms and conditions of the policy on account of plying vehicle contrary to the condition or terms of agreement will not affect the right of third party for claiming the compensation. But the Insurance Company to pay compensation to the claimants and recover it from vehicle owner. In my view it is erroneous as when accident occurred at that time the deceased were walking on the road, they are third parties hence Insurance Company is liable to pay compensation. In view of the above, I pass following order:

ORDER

- (i) Both the appeals are allowed.

(ii) The respondent - Insurance Company is liable to pay the compensation to the claimants and it shall not be recovered from the appellants.

7. The appeals are disposed off.

8. Learned counsel for respondent No.1 – Insurance Company undertakes to file Vakalatnama.

(SHIVKUMAR DIGE, J.)