

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1512 OF 2013

United India Insurance Company Ltd.	}	
Motor-Third Party Hub	}	
Union Cooperative Insurance Building	}	
Sir P.M. Road, Fort, Mumbai-400001	}	...Appellant

Versus

1. Mr.Sanjay Prabhakar Davane	}	
R/o. Dhakati Dahanu, Mangel Ali,	}	
Taluka-Dahanu, District-Thane.	}	
 2. Mr.Asif Hussain Shaukat Hussain	 }	
R/o Saban Pura, Amravati	}	...Respondent

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Mr.T.J. Mendon, for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3 MAY 2023

JUDGMENT :-

. The issue involved in this Appeal is that the Claimant was a gratuitous passenger in offending vehicle, in spite of that the Motor Accident Claims Tribunal, Palghar awarded compensation which is erroneous.

2. It is contention of learned counsel for the Appellant-Insurance Company that the Tribunal failed to appreciate that the Claimant in the present case had no business to travel in a goods vehicles. The Appellant is not liable to pay any compensation as the Claimant was traveling as a gratuitous passenger.

3. The learned counsel further submits that the Tribunal has erroneously held that the Claimant was a owner of goods. The occupation of Claimant was shown in the Claim Petition as labourer. If he was labourer then how the Claimant can be considered as owner of the goods? But this fact is not considered by the Tribunal and awarded compensation. Hence, requested to allow the Appeal.

4. It is contention of learned counsel for the Claimant that the Claimant has suffered 50% permanent partial disability in the said accident. The father of the Claimant wanted to purchase wood for constructing the boat/trawler. At the time of the accident Claimant was major. After purchasing the said goods he was traveling with his father in the offending truck. So the Claimant cannot be considered as gratuitous passenger. The accident occurred due to negligence of the driver of the offending truck. The Tribunal has considered all the aspects while awarding compensation. No interference is required in it.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Palghar (for short 'The Tribunal').

6. It is case of the Claimant that father of the Claimant by name Prabhakar Janardan Davne had decided to built the boat/trawler. For that purpose, the Claimant along with his father and one carpenter by name Mahesh Marde had gone to Lasalgaon for purchasing the wood. After purchasing the wood, it was loaded in the truck bearing registration No.MH-04/H-1834 (hereinafter referred as 'offending truck') and they were returning back by the said truck on 14 January 2009. When they were returning back at about 7.00 p.m., the driver of the offending truck drove the same in a negligent manner in high and excessive speed, without taking into consideration the condition of the road and on a sloppy turn near village Dengachimet he gave dash to the road side crack (Darad). Due to this accident Claimant and Mahesh sustained injuries. His father Prabhakar also sustained severe injuries. The Claimant took treatment as indoor patient in hospital at Dahanu. The offence was registered against driver of the offending truck.

7. It is contention of learned counsel for the Appellant that the Claimant cannot be considered as owner of goods. He was traveling with his father in the offending truck and his

occupation was shown as labourer. While dealing with this issue the Tribunal has observed that admittedly, the accident occurred due to negligence of the driver of the offending truck. The Tribunal has further observed that pleading and evidence of the Claimant shows that his father had decided to construct a boat/trawler for livelihood of their family hence alongwith the carpenter the Claimant and his father had gone to purchase the wood for constructing the boat at Lasalgon and after purchasing the goods they were returning back to their home by the offending truck. It was loaded with the wood purchased by them.

8. The Tribunal further observed that in view of Section 13(2) of General Clauses Act, the words “owner” and “authorized representative” are used in a singular form in above section. These words include the plural also. There may be the contingency that several owners of their respective goods may hire goods carriage vehicle jointly for transportation of their respective goods. The question remains whether more than one owner of same goods can get the benefit of Section 147(1)(b)(i) of the Motor Vehicles Act. If interpretation of this provision as submitted by the Advocate of the Claimant is accepted then it has to be said that there is no legal bar for traveling by more than one owners of the same goods along with the goods in goods carriage vehicle.

9. It is further observed that in the present case, father

of the Claimant wanted to purchase the goods to construct the boat/trawler. The Claimant attained majority which is prior to the incident. The Claimant had travelled with his father for purchasing the goods cannot be said as unreasonable. If Claimant joined his father to help him for loading and unloading of the wood in the truck and to see that it is safely transported, it cannot be said that he had traveled with his father unnecessarily. If this is the position, then certainly considering the overall circumstances in this case, it can be said that Claimant was traveling in the truck in the capacity of the owner of the goods loaded in the truck along with his father.

10. By considering these observations and other observations, the Tribunal has awarded compensation. I do not find any infirmity in it.

11. Admittedly, the father of the Claimant had hired the offending truck for carrying goods. After purchasing the goods while returning back, the accident occurred in which the father of the Claimant has died. Whereas the Claimant and other person i.e. carpenter is injured in the said accident. The Claimant cannot be termed as gratuitous passenger as he was travelling with goods in the capacity of owner, as his father had purchased the said goods. I do not see merit in the contention of the learned counsel for the Appellant that the Claimant was travelling as a gratuitous

passenger in the offending truck.

12. In view of above I pass following order.

ORDER

(i) The Appeal is dismissed. No order as to cost.

(ii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.

(iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)