

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

FIRST APPEAL NO.1345 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. Smt.Bharati Prabhakar Davane	}	
(Deceased)	}	
2. Mr.Sanjay Prabhakar Davane	}	
(Deceased)	}	
3. Kum.Swati Prbhakar Davane (Daughter	}	
of deceased)	}	
4. Mr.Mayur Prabhakar Davane (Son of	}	
deceased)	}	
All R/at Dhakati Dahanu, Mangel Ali,	}	
Taluka-Dahanu, District-Thane.	}	
5. Mr.Asif Hussain Shaukat Hussain	}	
R/o Saban Pura, Amravati	}	...Respondents

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 deceased

was travelling as 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 deceased was traveling in the offending truck as a gratuitous passenger. Therefore, under law no compensation could be made payable by the Appellant to the Claimants. But the Tribunal failed to take into account this fact and has awarded compensation which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Claimants that deceased was carrying goods in the offending truck. He had hired the said truck for carrying wood. He was owner of the said wood. The offending truck was goods carriage, as deceased was owner of woods carrying in the said truck. He cannot be considered as a gratuitous passenger. The Tribunal has considered all aspects while allowing the Claim Petition. No interference is required in it.

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

5. It is Claimants case that deceased Prabhakar Davane

was involved in fishing activities and had desire to have his own boat/trawler for his fishing business. For this purpose he along with his son Sanjay Davane and one carpenter Mahesh Marde had gone to Lasangon, District-Nashik to purchase wood for constructing the boat. On 14th January 2019 at 7.00 p.m. after purchasing the wood they loaded the said wood in truck bearing registration No.MH-04/H/1834 and were returning back to Dhakti Dahanu. The driver of the 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 said accident Prabhakar sustained severe injuries, his son Sanjay and carpenter Mahesh also sustained injuries. During treatment Prabhakar died in the hospital. Offence was registered against the driver of the offending truck.

6 It is contention of the learned counsel for the Appellant that deceased was gratuitous passenger in the offending truck. While dealing with this issue the Tribunal has observed that deceased Prabhakar along with his son Sanjay and one carpenter had gone to purchase the woods for making boat/trawler and was returning back by truck along with wood. A.W.1 Bharti Davne who is wife of the deceased has deposed this fact. In her cross-examination nothing elicited to disbelieve her version. Moreover, nowhere it is the case of insurer that the wood

loaded in the truck was belonging to some other person and was not of Prabhakar. Even witness of the insurer has also not uttered a single word in his evidence on this point. Receipt at Exhibit-29 shows that one Vishnu Ramchandra Tandel had obtained the custody of the wood in the truck and statement of Sanjay recorded by I.O. at Exhibit-22 shows that said Vishnu is his relative i.e. relative of Prbahakar.

7. The Tribunal has further observed that it has to bear in the mind that during the said accident Prabhakar died and Sanjay was admitted in the hospital being injured when Vishnu who is the relative of Prabhakar took the custody of the wood. It cannot be said that Prabhakar was not owner of the said wood as submitted by advocate of insurer. In view of all these reasons I hold that deceased Prabhakar was the owner of the woods and being owner he was travelling alongwith woods in the truck. If this is the position then insurer cannot avoid the liability to pay the compensation by saying that Prabhakar was the gratuitous passenger in the truck.

8. The Tribunal has further observed that in view of the amendment in Section 147(1)(b)(i) of the Motor Vehicle Act the passenger in goods vehicle traveling alongwith his goods is entitled for the compensation on account of the injury sustained by him or if his death is caused his legal representatives are

entitled for the compensation.

9. I do not find any infirmity in the observations of the Tribunal as admittedly, deceased Prabhakar had hired offending truck for carrying woods, he was owner of the woods in the offending truck being owner of the said woods he cannot be termed as gratuitous passenger. The Appellants have not examined the driver of truck to prove that the deceased was not owner of the said woods nor the said fact was denied by producing any evidence before the Tribunal. Hence, I do not see merit in the contention of learned counsel for the Appellant that deceased was gratuitous passenger in the offending truck and 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.)