IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2886 OF 2015

The New India Assurance Company Ltd., ... **Appellant**
Through its Administrative Officer,
Legal Hub,
Shri Ravikant Rajendraprasad Yadav,
Age 25 years, Occu: Service,
R/o Divisional Office- I
New India Insurance Co. Ltd.,
Adalat Road, Aurangabad.

VERSUS

1. Shri Sitaram Pita Chavan
Age 60 years, Occu: Labourer
R/o Umbarkhed (Satkund)
Tq. Kannad, Dist. Aurangabad.

2. Shri Madan Hiraman Chavan (Rathod),
Age 47 years, Occu: Business,
R/o Satkund Tq. Kannad Dist. Aurangabad

... **Respondents**

Mr. Swapnil S. Rathi, Advocate for the Appellant
Mr. Tapan Kishor Sant, Advocate for Respondent No.1
Mr. S. D. Hiwrekar, Advocate for Respondent No.2.

CORAM : Y. G. KHOBRAGADE, J.
Dated : 30th April, 2024

JUDGMENT

1. Heard Mr. Swapnil Rathi, the learned counsel for Appellant-Insurance Company, Mr. Tapan Kishor Sant, the learned counsel for present Respondent No. 1/original Claimant and Mr. S. D. Hiwrekar, the learned Counsel for Respondent No.2/owner of offending Vehicle.

2. The present appellant/Insurance Company is original Respondent No. 2, present Respondent No. 1 is original Petitioner/ claimant and present Respondent No. 2 is Original Respondent No. 1/ contractor and owner of offending vehicle. For the sake of brevity, parties to the present appeal, hereinafter, will be referred to in their original capacity.

3. The Appellant/Insurance Company has preferred present appeal under Section 173 of the Motor Vehicles Act, 1988 and questioned the legality and validity of the Judgment and Award dated 27.07.2015 passed by the learned Member, Motor Accident Claims Tribunal, Dhule in Motor Accident Claim Petition No.187 of 2010, whereby the learned Tribunal allowed the Claim Petition and directed the respondents to pay the compensation to the tune of Rs.6,98,000/- jointly and severally to the original claimant inclusive of N.F.L. amount with interest @ 7.5%.

4. The Petitioner/original claimant filed proceeding bearing M. A. C. P. No. 187 of 2010 and thereby prayed for compensation to the tune of Rs. 3 lakhs with interest @ 18% from the date of filing of claim till realization of the amount on the ground that, on 10.11.2006, his son Pundlik was travelling in a vehicle bearing registration No. MH-20-A-5385 being a labour and was proceeding towards Durga Khandsari, Khetia (MP) from Umbarkhed Ta. Kannad Dist. Aurangabad for cutting of

sugarcane and it's transportation to the Sugar Factory. Respondent No.1 is a contractor for providing labour for sugarcane cutting and it's transportation at Sugar Factory from field of Agriculturist. Respondent No. 1 is the owner of the vehicle and on fateful day drove said vehicle in rash and negligent manner, due to which vehicle was turned turtle and accident has occurred on Mumbai-Agra National Highway near Mori (Bridge) No. 247/2 in which his son Pundlik sustained grievous injuries and succumbed to the injuries while in "Astha Hospital" at Dhule.

5. According to the claimant, his son was doing labour work of sugarcane cutting and was earning Rs. 4000/- per month, but due to accidental death of his son, he has suffered a lot, hence, claimed for compensation under various heads. According to the Petitioner/original claimant, said accident caused due to rash and negligent driving of truck by respondent no. 1 and said truck was duly insured with respondent No.2/Insurance company. Therefore, respondents are jointly and severally liable to pay compensation.

6. Though, respondent No.1 owner/driver served with the notice, but he failed to file written statement. Respondent No.2/Insurance Company (present appellant) filed written statement at Exh. 19 and thereby denied the claim of the claimant. Defence of respondent No.2 is that respondent no.1 was not holding the valid driving licence as well as

he was carrying passengers in the goods vehicle, therefore, there is breach of policy. Hence, prayed for dismissal of the claim petition.

7. On the basis of rival pleadings, the learned Tribunal framed issues at Exh. 20. In order to prove the claim the petitioner/original claimant has filed evidence affidavit at Exh. 21 and proved the contents of F.I.R. Exh.26, spot panchanama Exh. 29, inquest Panchanama Exh. 28, postmortem report Exh.29.

8. On 27.05.2015, the learned Tribunal passed the impugned Judgment and award and determined compensation to the tune of Rs.6,98,000/- under various heads as observed in Paragraph No. 13 of the Judgment. Being aggrieved by said judgment and award, the Respondent No.2/ Insurance company has preferred this present appeal.

9. Mr. Swapnil Rathi, the learned counsel for the appellant/ Insurance Company, vehemently canvassed that the deceased Pundlik was not employed by respondent No. 1 over the insured vehicle. On the contrary, it is the case of the claimant that at the relevant time, his son Pundlik was travelling on the said vehicle for going to sugarcane factory for cutting sugarcane. Therefore, it proves that the deceased was travelling in the goods vehicle in capacity of passenger and the same act is not covered under the policy. The learned counsel for the Insurance

company further canvassed that the claimant has failed to prove that the deceased Pundlik was employee of respondent no.1-owner/driver of the vehicle or the deceased was engaged in the work of operation of vehicle. On the contrary, the deceased was travelling in the goods carriage vehicle for going to sugar factory, however, the learned tribunal failed to appreciate the evidence and passed the impugned judgment and award. Therefore it is not sustainable in the eyes of law.

10. He further canvassed that the learned tribunal committed grave error while deciding the claim and granting 50% additional compensation under the head of future prospects of the deceased. Therefore, the impugned judgment and award is illegal and bad in law, hence, prayed for quashing and setting aside the same.

11. In support of these submissions, the learned counsel for the appellant/insurance company has placed reliance on the following cases:

(1) National Insurance Company Ltd. Vs. Pranay Sethi & others 2 (2017) 16 SCC 680.

(2) Sanjeev Kumar Samart Vs. National Insurance Co. Ltd, AIR 2013 SC 1125.

(3) New India Assurance Co. Ltd. Vs. Vedwati and others, AIR 2007 SC 1334(1)

(4) New India Assurance Co. Ltd. Vs. Asha Rani and others, 2002 AIR

SCW 5259.

(5) National Insurance Company Vs. Rattani and others, AIR 2009 SC 1499 .

(6) Unreported judgment of this Court -United India Insurance Co. Ltd. Vs. Kalabai Padmakar Jagale and others in First Appeal No. 2881 of 2008 (Aurangabad Bench).

12. Per contra, Mr. Tapan Kishor Sant, the learned counsel appearing for Respondent No.1/ original claimant supported the findings recorded by the learned Tribunal. The Counsel for the Respondent no. 1 submits that, the claimants specifically pleaded that, the Respondent No.1 is contractor for providing labourer for cutting sugarcane and transportation of sugarcane from agricultural field of farmers to Durga Khandsari, Khetia. The deceased Pundlik, son of the original claimant, was employee of respondent no.1, who is owner and driver of vehicle No. MH-20-A-5385, but due to rash and negligent driving of Respondent No.1, said vehicle turned turtle on Mumbai-Agra National Highway near Mori (Bridge) No. 247/2 in which his son- Pundlik sustained grievous injuries and succumbed to the injuries.

13. The claimant filed evidence affidavit at Exh. 21 and specifically deposed that at the time of accident, his son was employee of respondent No.1 and was earning Rs.4,000/- per month. So also, the Insurance Policy Exh. 21 proves about payment of premium for five

employees @ Rs.125/- per labour. Therefore, the learned Tribunal rightly appreciated the evidence available on record and granted the compensation which does not suffer from any illegality, hence prayed for dismissal of the appeal.

14. Having regard to the submissions canvassed on behalf of both sides, I have gone through the record. It is needless to say that, the claimants have specifically pleaded in Paragraph No.14 of the claim petition that, the Respondent No.1 is owner and driver of the truck No. MH-20-A-5385. The Respondent no. 1 is labour Contractor and he providing labour for cutting of sugarcane and its transportation from agricultural fields of the farmers to Durga Khandsari. On 09.11.2006, deceased, alongwith other labourer were travelling in Vehicle No. MH-20-A-5385 for going to Durga Factory. Respondent No.1 was driving the said vehicle from Umberkhad and due to rash & negligent driving of the vehicle by the Respondent accident occurred as vehicle turned turtle and the deceased Pundlik, son of the claimant sustained serious injuries and he succumbed due to injuries.

15. The Insurance company though filed written statement at Exh. 49, but has not denied the fact that deceased Pundlik was not employee of respondent no.1. Insurance policy Exh. 21 proves that the appellant/ insurance company has obtained premium for five employees

@ Rs.125/- per labour.

16. Respondent No.1 is owner and driver of the vehicle against whom offence under Section 62 and 192 of the Motor Vehicles Act came to be registered with concerned police station. It is an admitted fact that the injured Pundlik died on 11.11.2006, while hospitalization in Astha Hospital at Dhule. The Postmortem Report Exh. 29 corroborates about death of deceased due to injuries described in paragraph Nos. 17 and 18 of the Postmortem Report, which are accidental injuries. The Medical Officer opined that cause of death of deceased is due to head injury.

17. In the case of **Sanjeev Kumar Samrat** (supra), the Hon'ble Supreme Court has observed in Paragraph No. 24 as under:

> *"24. It is worthy to note that sub-clause (i)(c) refers to an employee who is being carried in the vehicle covered by the policy. Such vehicle being a goods carriage, an employee has to be covered by the statutory policy. On an apposite reading of Sections 147 and 167 the intendment of the Legislature, as it appears to us, is to cover the injury to any person including the owner of the goods or his authorised representative carried in a vehicle and an employee who is carried in the said vehicle. It is apt to state here that the proviso commences in a different way. A policy is not required to cover the liability of the employee except an employee covered under the 1923 Act and that too in respect of an employee carried in a vehicle. To put it differently, it does not cover all kinds*

of employees. Thus, on a contextual reading of the provision, schematic analysis of the Act and the 1923 Act, it is quite limpid that the statutory policy only covers the employees of the insured, either employed or engaged by him in a goods carriage. It does not cover any other kind of employee and therefore, someone who travels not being an authorised agent in place of the owner of goods, and claims to be an employee of the owner of goods, cannot be covered by the statutory policy and to hold otherwise would tantamount to causing violence to the language employed in the Statute. Therefore, we conclude that the insurer would not be liable to indemnify the insured."

18. In the case of **Vedwati & others** cited supra, the Hon'ble Supreme Court, in paragraph Nos. 14 and 15 has observed as under:

"14. The inevitable conclusion, therefore, is that provisions of the Act do not enjoin any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods carriage and the insurer would have no liability therefor.

15. Our view gets support from a recent decision of a three-Judge Bench of this Court in New India Assurance Company Limited v. Asha Rani and Ors. (2002 (8) Supreme 594] in which it has been held that Satpal Singh's case (supra) was not correctly decided. That being the position, the Tribunal and the High Court were not justified in holding that the insurer had the liability to satisfy the award."

19. In the case of **Rattani and others** cited supra, it has been held

that gratuitous passengers in goods carriage vehicle cannot claim to be representative of the owner of goods vehicle. Therefore insurer cannot be held liable for compensation.

20. In the case of **Asha Rani & others** cited supra, it is held that (prior to amendment) the insurer will not be not liable to pay compensation to the owner of goods or his authorized representative on being carried in goods vehicle when that vehicle met with an accident and owner of goods or his representative dies or suffers bodily injury.

21. In the judgment dated 02.05.2014 in First Appeal No. 2881 of 2008, Co ordinate Bench of this Court has held that 52 passengers who were travelling in the truck they all cannot be called as labour. However, in the case in hand, it is prima facie proved that on the fateful day, deceased Pundlik was traveling in goods vehicle No. MH-20A-5385 being labour/employee of Respondent no.1/owner and driver of said truck for providing labour for sugarcane cutting and transportation of sugarcane from agricultural field to Sugar factory.

22. Though, the insurance company contended that deceased Pundlik was not employee of respondent no.1, however, the appellant insurance company has not set out defence in its written statement. Nonetheless, no such suggestion have been given in the cross examination to the CW-1 claimant. Therefore, in absence of such pleading and cross-

examination, no such defence can be set out first time in appeal by the original Respondent Insurance Company.

23. On perusal of impugned Judgment and Award it prima facie appears that, the findings recorded by the learned Tribunal are based on oral as well as documentary evidence, which does not appear perverse. In view of the above discussion, no substantial grounds exists to interfere with findings recorded by the learned Member, MACT to the extent of quantum of compensation.

24. In the case of **Pranay Sethi,** cited supra, it has been held that, when the deceased does not have monthly salary and is in age group of 21-25, in that circumstance, future prospects shall not be more than 40%. In the case in hand, admittedly the deceased was in the age group of 21 to 25. The learned Tribunal granted 50% future prospect, which is certainly contrary to the view taken by the Hon'ble Supreme Court.

25. Therefore the impugned judgment and award is liable to be modified to the extent of future prospect which needs to be considered 40% instead of 50%. Therefore, the Claimant is entitled to receive the compensation by considering 40% future prospects, as follows:

1.	Gross yearly income (4000 x 12)	Rs. 48,000/-
2.	40% Future prospects 48000 x 40%	Rs. 19,200/-
3.	Gross Income for Assessing Compensation (48000 + 19200)	Rs. 67,200/-

4.	50% Deduction towards persons expenses (Rs.67200/2)	Rs. 33,600/-
2.	Multiplier for the Age of 25 is '18' (33600 x 18)	Rs.6,04,800/-

26. Therefore, considering 40% future prospect, compensation for loss of income is required to be modified to the tune of Rs.6,04,800/- instead of 6,48,000/- as granted by the learned tribunal.

27. In view of the above, I pass the following Order.

O R D E R

(i) The appeal is partly allowed with proportionate costs.

(ii) The judgment and award passed by the Motor Accident Claims Tribunal, Dhule in M. A. C. P. No. 187 of 2010 dated 27.07.2015 is hereby modified only to the extent of future prospects which are reduced to 40% instead of 50%. However, the impugned judgment and award is maintained to the extent of remaining compensation under other heads.

(iii) The Respondents to pay the total compensation of Rs. 6,54, 800/- (Rupees Six Lakhs Fifty Four thousand Eight Hundred) inclusive of NFL, if any, with interest @ 7.5% per annum to the present respondent no. 1/original claimant from the date of filing of Claim Petition i.e. 05.03.2010 till the date of realization of the entire amount.

(iv) If the compensation amount is already deposited, present respondent No.1/Claimant is permitted to withdraw the amount as per this award and rest of the amount be returned to the appellant /Insurance company.

(Y. G. KHOBRAGADE, J.)

JPChavan