

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1142 OF 2008

	Divisional Manager The New India Assurance Co.Ltd., Mata Building, Mata Building, Dr. Ambedkar Road, Sangli. (Insurer of tempo No.MXW 2016)	Appellants (Orig. Opponent No.3)
	Versus	
1	Malutai @ Malati Nabhiraj Lande Deceased through her legal heirs 1. Suvidha Rajnikant Bhure, Padmavati Kirana, Swagat Lawn Road, Ramabai Nagar, Washim 2. Sudharkar Nabhiraj Lande 3c. Late Prabhakar Nabhiraj Lande 3c-i Sunita Prabhakar Lande 3c-ii Pratiksha Prabhakar Lande 3c-iii- Kunal Prabhakar Lande, Mauje Digras, Tal: Miraj, District: Sangali. 4. Usha Prakash Chaugule, Rukadi, Tal: Hathkanangale, District : Kolhapur, Padmavati Kirana, Swagat Lawn Road, Ramabai Nagar, Washim.	Original Claimant
2	Abdul Razzaq S/o. Dawalsab Jambgi @ Mirji, age – major, occu. Driver of, No. MXW 2016 of Kagwad, Tal. Athani, Dist. Belgaum.	Original Opponent No.1
3	Mahesh Girimallappa Kanal Age-Major Occ.Owner of tempo No. MXW 2016, R/o. Opposite Bukte Chawl, Panchasheel Nagar, Sangli.	Original Opponent No.2
4	Ramesh Kashinath Gondkar, Age Major, Occu. Driver of Truck No.MH-10-A/2325, r/o. Shivaji Chowk, Islampur, Tal. Walva, Dist. Sangli.	Original Opponent No.4
5	Prakash Shivaji Desai, Occu. Owner of truck no. MH-10-A/2325,	

	R/o.1309, A New School No.1, Uran-Islampur, Tal. Walva, Dist. Sangli	Original Opponent No.5
6	Divisional Manager, United India Insurance Co. Ltd. Samarat Mansion, Vakharbhag, Sangli, (Insurer of truck No.MH-10-A/2325)	Original Opponent No.6 ...Respondents.

Ms. Poonam Mital, Advocate for the Appellant.

Ms. Anita Chaware, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th FEBRUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is liability of paying compensation amount.
2. It is contention of learned counsel for the appellant – Insurance Company that the deceased was travelling in the offending vehicle as gratuitous passenger, there was breach of terms and conditions of the Insurance Company but this fact is not considered by the Tribunal and has fixed 50% liability, out of the total liability, on the Insurance Company, which is erroneous. Learned counsel further submitted that the appellant has examined the officer of RTO and officer of the Insurance Company to prove their defense but their evidence is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.1/ claimant that claimant was not gratuitous passenger in the offending vehicle. The claimant and other occupants of the Matador had acquaintance with the owner of the Matador and to attend the marriage, they had gone in the said Matador and accident occurred. The claimant cannot be termed as gratuitous passenger. Learned counsel further submitted that insurance policy covered all the occupants of the Matador.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short "the Tribunal").

5. The claimant examined – Vijaykumar Lande to prove that she was not a gratuitous passenger. He has stated that the offending Matador belonged to his friend and on account of their relationship, the matador had given to the claimant and her relatives for attending the function. Nothing elicited in his cross examination to show that the claimant was gratuitous passenger. The appellant-Insurance Company has examined DW-1 Shahaji Kamble to prove that the offending vehicle was not granted permission to carry passengers and DW-2-Vijaya Laxmi Kulli, Senior Assistant working in the office of the Insurance Company, he has stated that the offending vehicle was insured with their Company. She further stated that Rs.268/- was accepted by way of premium by their office and Rs.255/- was accepted for third party risk. The insurance policy is at Exhibit-19, this policy shows that the occupants seating

capacity was(8+1) and the premium was paid, covering insurance of the occupants. It has not come on record that the claimant was fare paying passenger. Moreover, the insurance policy covers the occupants of the Matador.

6. Considering the above reasons, the appeal is devoid of merits and I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)