

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 398 OF 2023

- 1 Smt. Sunita Rajendra Gaikwad)
Age : 30 years, Occ : Household)
- 2 Sadanand Rajendra Gaikwad)
Age : 12 years, Occ : Education)
- 3 Pallavi Rajendra Gaikwad)
Age : 9 years, Occ : Education)
- 4 Shanta Nana Gaikwad)
Age : 55 years, Occ : Household)
- 5 Nana Salubhau Gaikwad)
Age : 60 years, Occ : Labour)
Applicant Nos. 2 and 3 being minors through Legal)
guardian Applicant No.1.)
All R/o. Chandajira, Taluka-Jalna, Dist.-Jalna) Appellants
... (Original Claimants)

Versus

- 1 Sadashiv Dagdu Shinde)
Age : Adult, Occ.: Agri)
R/o. Sonake, Taluka-Pandharpur, Dist-Solapur)
- 2 The New India Assurance Co. Ltd.)
Hutatma Smruti Mandir, Park Chowk, Solapur) Respondents
... (Original Respondents)

WITH

FIRST APPEAL NO. 393 OF 2024

- 1 Smt. Kevalbai Maruti Mane)
Age : 35 years, Occ.: Household)
- 2 Vikram Maruti Mane)
Age : 17 years, Occ.: Education)
- 3 Rutuja Maruti Mane)
Age : 14 years, Occ.: Education)
Appellant Nos.2 & 3 being minors through legal)

guardian Appellant No.1)
 All R/o. Bhaatumbare, Taluka-Barshi, Dist-Solapur)
 ...Appellants
 (Original
 Claimants)

Versus

1 Sadashiv Dagdu Shinde (Owner of tractor))
 Age : Adult, Occ.: Agri)
 R/o. Sonake, Taluka-Pandharpur, Dist-Solapur)
 2 The New India Assurance Co. Ltd.)
 Hutatma Smruti Mandir, Park Chowk, Solapur)
) Respondents
 ... (Original
 Respondents)

Mr. Rajshekhar S. Alanage, Advocate for the Appellants in both the appeals.

Mr. Dinesh Bhosale, Advocate for Respondent No.1 in both the appeals.

Ms. Shalini Shankar, Advocate for Respondent No.2 in both the appeals.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH, 2024.

Oral Judgment :

1. By way of these appeals, the Appellants/Claimants are seeking pay and recovery order. Both these appeals are arising out of the same accident, hence, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Appellants/Claimants that the Tribunal has observed that there was breach of terms and conditions of the Insurance Policy, as the deceased was travelling in the tractor which was commercial vehicle.

The Tribunal has exonerated the Insurance Company, which is erroneous. The Tribunal should have passed pay and recover order. Hence, requested to allow these Appeals.

3. He relied on *Anu Bhanvara & Ors. Vs. IFFCO TOKIO General Insurance Company & Ors. 2019 ACJ 2802*.

4. It is contention of learned counsel for the Respondent No.2/Insurance Company that deceased was gratuitous passenger in the tractor. The tractor was commercial vehicle. There was breach of terms and conditions of Insurance Policy. The Insurance Company is not liable to pay the compensation. The Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

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

6. It is claimant’s case that on 31st March, 2011 deceased Rajendra as well as his associates were travelling by a tractor bearing registration No.MH-13-AJ-925, it was driven by Padmakar Shelake in rash and negligent manner and the same turned turtle causing multiple serious injuries to deceased Rajendra and his associate. Due

to injuries deceased died while taking treatment. The FIR was lodged against the driver of tractor. While exonerating the Insurance Company, the Tribunal has observed that at the time of accident, the tractor and trolleys were insured with the Insurance Company and the tractor was carrying sugarcane to the sugar factory. The deceased were travelling in the said tractor. They were gratuitous passenger in goods vehicle and the tractor is insured for agriculture and commercial purposes and not for carrying passengers. There was breach of terms and conditions of Insurance Policy hence, the Tribunal has exonerated Insurance Company and directed the owner of the tractor to pay the compensation. In my view, as per view of Hon'ble Apex Court in the case of *Anu Bhanvara (Supra)*, if deceased was gratuitous passenger, the Insurance Company shall pay the compensation to the Claimants and recover it from the owner of the vehicle. The ratio laid down by the Hon'ble Apex Court in above case is squarely applicable in the present case.

7. In view of above, I pass following order.

ORDER

- i. Both Appeals are partly allowed.
- ii. The Respondent No.2/Insurance Company shall

deposit the compensation amount fixed by the Tribunal along with accrued interest thereon, within six weeks after receipt of the order.

- iii. The Respondent No.2/Insurance Company is at liberty to recover the paid amount along with interest from the owner of offending vehicle.
- iv. The Claimants in both appeals are permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The Claimants shall pay the deficit Court fees on enhanced amount, as per Rule.

- 8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)