

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL STAMP NO. 25436 OF 2012

National Insurance Co. Ltd.

Mumbai Regional Office I, 5th Floor, Sterling Cinema
Bldg., 65, Murzban Road, Fort, Mumbai – 400 020

... Appellant

Versus

1. Bebitai Bhagoji Bodke

Age : 31, Occ : Nil

2. Mahesh Bhagoji Bodke

Age : 10, Occ : Education

3. Sanika Bhagoji Bodke

Age : 8, Occ : Nil

Resp. No.2 and 3 through her natural guardian /
mother Resp. No.1

4. Jayram Bhagoji Bodake

Age : 72, Occ : Nil

5. Savitribai Jayram Bodke

Age : 66, Occ : Nil

All R/O. Maliwada, At & Post : Yelwal Jogai

Tal : Shahuwadi, Dist : Kolhapur

6. Dhudnath Tiwari

Age : 50, Occ: Transport,

R/O Bhiwandi Bypass, Sayoli Village, Bhiwandi,
Raigad(C.A.Stands dismissed against R.No. 6 vide Reg.
Judl. II Order dt. 11/10/14)Respondent
No.1 to 5 are
... the original
claimant Nos.
1 to 5

WITH

FIRST APPEAL NO. 1438 OF 2013

National Insurance Co. Ltd.

Mumbai Regional Office I, 5th Floor, Sterling Cinema
Bldg., 65, Murzban Road, Fort, Mumbai – 400 020

... Appellant

Versus

1. Sangita Dhaklu Yedge

Age : 29, Occ : Nil

2. Savita Dhaklu Yedge
Age : 10, Occ : Education
3. Kumari Dhaklu Yedge
Age : 8, Occ : Nil
4. Tai Dhaklu Yedge
Age : 7, Occ : Nil
Resp.No.2 to 4 through her natural guardian /
mother Resp. No.1.
5. Vitthal Babu Yedge
Age : 70, Occ : Nil
6. Jaibai Babu Yedge
Age : 67, Occ: Nil.

All R/o. Manicha Dhangar Wada
Post : Yelwan Jogai, Tal : Shahuwadi,
Dist.Kolhapur

7. Dhudnath Tiwari
Age : 50, Occ : Transport
R/o : Bhiwandi Bypass, Sayoli Village,
Bhiwandi, Raigad

... Respondents

.....

Mr. Atul B. Gatne, Advocate for the Appellant.

Mr. Sanjay A. Ghaisas, Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th FEBRUARY, 2024.

ORAL JUDGMENT :

1. First Appeal No. 1438 of 2013 is not on board. Taken on board.
2. The issues involved in both these appeals are, deceased were labourers travelling in the goods vehicle, there was breach of terms and conditions of insurance policy. As both the appeals are arising out of same accident, hence I am deciding it by this common judgment.

3. It is the contention of learned counsel for the appellant/Insurance Company that deceased in both these appeals were labourers and they were travelling in goods vehicle, there was no coverage of the insurance policy. There was breach of terms and conditions of insurance policy but this fact is not considered by the Tribunal and has passed impugned judgment and order, hence requested to allow the appeal.

4. It is contention of learned counsel for the respondent Nos. 1 to 3/claimants that, out of the same accident one claim petition was filed before the Tribunal by the claimants for getting compensation in respect of death of their family member. The said claim petition is allowed by the Tribunal and liability is fixed on the appellant/Insurance Company but said Judgment and Order is not challenged by the appellant/Insurance Company. The appellant/Insurance Company has accepted the liability of paying compensation in that petition, hence, requested to dismiss the appeal.

5. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Raigad (for short **“the Tribunal”**). Admittedly, out of the same accident in other judgment the Tribunal has fixed liability on the Insurance Company. The said judgment has not been challenged by the appellant / Insurance Company. It proves that the view taken by the Tribunal in the said judgment is

accepted by the appellant / Insurance Company. The Tribunal has passed said order in that claim petition in the year 2011 till date appellant/Insurance Company has not challenged the said order. If now appellant / Insurance Company decides to challenge the said order it would be barred by law of limitation as more than 13 years is over, so appellant/Insurance Company cannot take stand of pick and choose in other matter.

6. In view of the above, both the appeals are devoid of merit and I pass following order:

ORDER

- i. Both the appeals are dismissed. No order as to cost.
- ii. The claimants in both the appeals are permitted to withdraw deposited amount along with accrued interest thereon.
- iii. The statutory amount along with accrued interest thereon be transmitted to the Tribunal. Parties are permitted to withdraw it as per Rule.
- iv. All pending civil/interim applications are disposed of.
- v. First Appeal (Stamp) No. 25436 of 2012 be registered for statistical purpose.

(SHIVKUMAR DIGE, J.)