**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1212 OF 2003**

Sadiq S/o Shabbir Shaikh,
Age : 45 Years, Occu. : Business,
R/o N.L.-2, Bldg. No. 2,
R. No. C-4, Sector 3, near
New Bombay. .. Appellant

**Versus**

1. The New India Insurance Co.
New India Insurance Building -87,
Mahatma Gandhi Road, Fort,
Bombay – 400 001,
Branch Office, Hutatma Smruti
Mandir Complex, Park Chowk,
Solapur – 413 001.

2. Baba Dagdu Jadhav,
Age : 60 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

3. Saw. Rukminbai Baba Jadhav,
Age : 52 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

4. Sindhubai W/o Khandu Jadhav,
Age : 34 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

5. Savitra D/o Khandu Jadhav,
Age : 19 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

6. Sachin S/o Khandu Jadhav,
Age : 14 Years, minor under
guardianship of his real mother
i. e. Respondent No. 4
Sindhubai W/o Khandu Jadhav,
Age : 34 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

7. Seeta D/o Khandu Jadhav,
Age : 10 Years, minor under
guardianship of his real mother
i. e. Respondent No. 4
Sindhubai W/o Khandu Jadhav,
Age : 34 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

8. Sumitra D/o Khandu Jadhav,
Age : 08 Years, minor under
guardianship of his real mother
i. e. Respondent No. 4
Sindhubai W/o Khandu Jadhav,
Age : 34 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

9. Somnath Khandu Jadhav,
Age : 05 Years, minor under
guardianship of his real mother
i. e. Respondent No. 4
Sindhubai W/o Khandu Jadhav,
Age : 34 Years, Occu. : Labourer,
Resident of Paranda, taluka
Paranda, District Osmanabad.

10. Sahabuddin S/o Shaikhala Shaikh,
Age : Major, Occu. : Driver,
Resident of Songiri, Tq. Bhoom,
Dist. Osmanabad.
(Driver of Truck No. MTB-4621) .. Respondents

Shri M. K. Deshpande, Advocate for the Appellant.
Shri Mohit R. Deshmukh, Advocate for the Respondent No. 1.
Shri S. T. Ghute, Advocate for the Respondent Nos. 2 to 9 – absent.

**CORAM : SHAILESH P. BRAHME, JJ.**
**DATE : 23RD APRIL, 2025.**

**JUDGMENT :**

. Heard both sides.

2. Appellant is the owner of the truck involved in the accident, who is challenging judgment and award dated 24.07.2003 passed by the learned Member, Motor Accident Claims Tribunal, Osmanabad in M. A. C. P. No. 137 of 1997 imposing liability of payment of compensation of Rs. 1,50,000/- on him with interest at the rate of 9% per annum from the date of petition till realization. Impugned judgment absolves the respondent No. 1/Insurance company from liability to pay compensation, but permits it to recover amount of no fault liability of Rs. 50,000/- from the appellant.

3. While admitting the appeal, this Court granted stay to the execution of the impugned award on condition of depositing amount of Rs. 50,000/-. Appellant deposited Rs. 25,000/- towards statutory deposit and Rs. 50,000/- as per the condition of interim stay.

4. The respondent Nos. 2 to 9 are the claimants and

dependents of deceased Khandu Jadhav. The deceased was 36 years of old when he met with an accident. He was driving two wheeler which was given dash by the truck owned by the appellant, which was insured with the respondent No. 1/insurance company. Immediately after accident first information report was lodged and investigation was conducted. Few papers of the investigation were produced by the respondents/claimants before the Tribunal. The respondent No. 10, driver was prosecuted for the offences punishable U/Sec. 279, 337, 304(A) of the Indian Penal Code and U/Sec. 184, 66(1)/192 of the Motor Vehicles Act, 1988 (for short 'M. V. Act") in S.C.C. No. 885 of 2003. Vide judgment and order dated 07.09.2007, he was acquitted.

5. The respondent No. 1/Insurance Company contested the claim on the ground that the risk of the deceased was not covered. He was not occupant of the truck. There was breach of permit U/Sec. 149(2) of the M. V. Act. There were as many as 40 to 50 persons traveling in a goods carriage vehicle. Accident occurred due to rash and negligent driving of the truck.

6. The claimants examined two witnesses and relied on the papers of investigation. The insurance cover note was produced at Exhibit 65.

7. It was held by the Tribunal that truck was being driven rashly and negligently. The insurance company was exonerated because the risk of the deceased was not covered. It was breach

of policy. Considering the source of income, the quantum was computed to the tune of Rs. 1,50,000/-.

8. Learned counsel Mr. M. K. Deshpande, for the appellant submits that in view of judgment of acquittal dated 07.09.2007 in S.C.C. No. 885 of 2003, the finding regarding rash and negligent driving is liable to be quashed. It is submitted that the deceased was a third party and was covered by policy and insurance company should have been held liable to pay the compensation. It is submitted that there was no material to infer that 30 to 40 persons were traveling in a truck. Impugned judgment and order is perverse and liable to be quashed.

9. Per contra, learned counsel Mr. Mohit Deshmukh appearing for the respondent No. 1/Insurance Company submits that first information report, statements of witnesses namely Abdul Gani and Shaikh Noor, which were produced by the claimants before the Tribunal disclose that 30 to 35 persons were traveling in a goods vehicle. He would submit that learned Tribunal has arrived at just and reasonable conclusion in exonerating the insurance company. He would submit that the observations of the learned Tribunal that as there is breach of policy, therefore, liability of the insurance company is not attracted is correct. It is submitted that there is breach of permit U/Sec. 149(2) of the M. V. Act. As the appeal is preferred by the owner of the truck, therefore, there is no question of passing order of pay and recover.

10. Mr. Mohit Deshmulh, learned counsel for the insurance company relied on the judgment of the Supreme Court in the matter of **Oriental Insurance Company Ltd. Vs. Premlata Shukla and others** reported in ***(2007) 13 SCC 476***.

11. I have considered rival submissions of the parties. Admittedly, present appellant and the driver of the truck did not file written statement before the Tribunal opposing claim of the respondent Nos. 2 to 9. When impugned judgment was pronounced, prosecution of the driver in S.C.C. No. 885 of 2003 was not concluded. He was acquitted on 07.09.2007. The policy of insurance placed on record at Exhibit 65 does show that third party risk was covered. The claimants led oral and documentary evidence in support of their claim and compensation of Rs. 1,50,000/- was awarded with interest. Despite having sufficient opportunity, appellant did not prefer to file written statement. Learned counsel has no justification for not filing the written statement. Therefore, there is very limited scope for the appellant in the first appeal.

12. The claimants had produced papers of investigation of Cr. No. 26/1997. I have gone through those papers, which are FIR (Exhibit – 41), statement of Abdul Gani and that of Shaikh Noor Ibrahim to disclose that 30 to 35 persons were traveling in truck on the fateful day. It was breach of permit as contemplated by Sec. 149(2) of the M. V. Act. The papers of investigation are reliable. In that regard learned counsel Mr. Mohit Deshmukh has rightly relied on the judgment of the Supreme Court in the

matter of **<u>Oriental Insurance Company Ltd. Vs. Premlata Shukla and others</u>** (supra).

13. Perusal of the policy, which is at Exhibit 65 shows that third party risk was covered. The deceased who was driving motorcycle can be treated as a third party. The policy was in existence, though there was breach of permit or breach of policy at the instance of the owners or driver of the vehicle. They could have been held liable and simultaneously order of pay and recover could have been passed against the Insurance Company. However, claimants were satisfied with the award and they have not challenge the same. Therefore, this Court need not saddle the liability of payment of compensation upon the insurance company.

14. As the appellant did not file pleadings and lead any evidence before the Tribunal, it would not be open for him to challenge the findings. Reliance is placed on the judgment of acquittal. That itself would not enure to the benefit of the apellant. There is breach of policy as well as breach of permit. The Tribunal has rightly held the owner liable to pay the compensation.

15. I have gone through the findings recorded by the Tribunal. I do not find that any case is made out by the appellant to cause interference. The conclusion drawn by the Tribunal is reasonable and quantum arrived at is also reasonable and plausible. I find no substance in the appeal. I, therefore, pass

following order.

**O R D E R**

A. First appeal is dismissed.

B. Award be drawn up accordingly.

C. Amount deposited by the appellant in this Court shall be disbursed to the claimant with accrued interest forthwith.

D. Original record and proceeding be sent back to the Tribunal forthwith.

**[ SHAILESH P. BRAHME, J. ]**

*bsb/April 25*