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**(2006) 06 BOM CK 0021**

**In the Bombay High Court**

**Case No : F.A. No's. 181, 182 and 184 of 1991**

Jagannath Vishnu Kore

APPELLANT

Vs

Kamalabai Maruti Kumbhar and Others

RESPONDENT

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**Date of Decision : 06-06-2006**

**Acts Referred:**

Motor Vehicles Act, 1939 — Section 110A

**Citation : (2008) ACJ 691**

**Hon'ble Judges : A.S. Oka, J**

**Bench : Single Bench**

**Advocate : R.S. Kate, for the Appellant; B.R. Patil and S.M. Vidyarthi, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

A.S. Oka, J.—Heard the learned Counsel appearing for the appellant. I have also heard the learned Counsel for respondent No. 5 as well as respondent No. 4. These three appeals can be conveniently disposed of by a common judgment as the same arise out of a common judgment delivered by the learned Member of the Motor Accidents Claims Tribunal, Sangli in three claim petitions filed u/s 110-A of the Motor Vehicles Act, 1939.

2. The present appeal is preferred by the original opponent No. 1 in a claim petition who is the owner of the truck bearing registration No. MXL 5543. Respondent Nos. 1 to 3 in First Appeal No. 181 of 1991 are the original claimants. The respondent Nos. 1 and 2 in First Appeal No. 182 of 1991 are the original claimants and respondent Nos. 1 and 2 in First Appeal No. 184 of 1991 are the original claimants. The other parties of the appeals are the driver of the truck and New India Assurance Co. Ltd. The truck was allegedly insured with the said insurance company.

3. The accident occurred on 27.7.1983 at about 10 p.m. 10 to 15 persons boarded the truck of the appellant. According to the claimants, the driver of the

truck was driving the truck in a rash and negligent manner. According to the claimants, the driver could not control the truck and, therefore, the truck left the road and fell on the land by the side of the road. The truck turned turtle. Three persons died in the accident and other persons in the truck were injured. Claim Petition No. 120 of 1984 was filed by respondent Nos. 1 to 3 in First Appeal No. 181 of 1991. The said claim petition was filed by the mother, widow and the brother of the deceased Tukaram Maruti Kumbhar who was sitting in the truck at the relevant time and died in the accident. Claim Petition No. 65 of 1984 was filed by the respondent Nos. 1 and 2 in First Appeal No. 182 of 1991. The claimants are the mother and brother of the deceased Sambhaji Jadhav who died in the accident. Claim Petition No. 46 of 1984 was filed by the respondent Nos. 1 and 2 in First Appeal No. 184 of 1991. The claimants in the said claim petition are the mother and brother of the deceased Baburao Patil who died in the accident.

4. The claim petitions were contested by the appellant and the driver of the truck by filing written statements. According to them three deceased persons and one Dattu were carrying some goods and had boarded the ill-fated truck as the owners of the goods and they had paid the charges for transportation of the goods which were carried in the truck. According to the written statement, the driver of the truck was not driving in a negligent manner or in a fast speed, it is contended that one vehicle came from opposite direction and that is the reason why the driver of the truck was required to take his truck below asphalted road for making a room for the vehicle coming from the opposite direction. As the truck was required to be taken on kacha road, it slipped and fell into the land by the side of the road and turned turtle. The insurance company also filed written statement. Though the insurance company did not dispute the existence of policy of insurance, it was contended that the truck was a goods vehicle and the driver had taken the passengers for hire. It was contended that the appellant and the driver of the truck have committed breach of terms and conditions of the policy and, therefore, the insurance company was not liable to honour the award which may be made by the Tribunal.

5. By impugned judgment and award, the learned Member of the Tribunal held that the accident took place due to rash and negligent driving on the part of the driver of the truck. The learned Member held that the deceased persons were the passengers taken in the truck against the payment of charges which was contrary to the express terms and conditions of the policy of insurance and, therefore, the insurance company was not liable to pay the compensation. However, the appellant and the driver were directed to pay the compensation to the claimants.

6. Mr. Kate for the appellant submitted that the evidence on record clearly establishes the fact that the deceased persons were escorting the goods which were being transported in a truck in question and they were not travelling as passengers for payment of consideration. He submitted that the evidence on

record shows that they were accompanying their goods which were being transported in the truck. He submitted that the finding of the Tribunal that the insurance company was not liable to pay compensation is required to be set aside. He submitted that the finding of the learned Member of the Tribunal on the issue of negligence is contrary to the evidence on record and in fact there is no negligence on the part of the driver of the truck. He submitted that, in any event, the compensation granted is on the higher side.

7. Mr. Vidyarthi appearing for the insurance company in all the three appeals supported the impugned judgment and award by contending that there was a clear breach on the part of the appellant of the terms and conditions of the policy of insurance. By placing reliance on the decision of the Apex Court in *Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others*, , he submitted that the insurance company was not liable to pay the compensation. He submitted that the learned Member of the Tribunal has rightly held that the insurance company was not liable to pay the compensation.

8. I have considered the submissions made by the learned Counsel for the parties. The first question to be considered is as regards the quantum of compensation awarded by the Tribunal in First Appeal No. 181 of 1991 which arises out of the award made in Claim Petition No. 120 of 1984. The compensation of Rs. 50,000 has been awarded inclusive of no fault liability. In this claim petition, the claimants are the widow, brother and mother of the deceased Tukaram. The age of the deceased was 22 years. The learned Member of the Tribunal has accepted the case that monthly earnings of the deceased Tukaram was Rs. 250. It is true that the multiplier of 20 should not have been applied and multiplier of 18 should have been applied. Applying multiplier of 15, if the compensation is calculated, the quantum of compensation of Rs. 50,000 will not change. The reason is that on account of loss of consortium, etc., only a sum of Rs. 8,000 has been awarded instead of Rs. 15,000. Therefore, the quantum of compensation fixed by the Tribunal in the said case is reasonable and proper.

9. In Claim Petition No. 65 of 1984 the compensation of Rs. 35,000 has been awarded. The said claim was made on behalf of the mother and younger brother of the deceased Sambhaji who was also 22 years of age at the time of accident. The Tribunal has taken the contribution by the deceased to his family at the rate of Rs. 200 p.m. Though according to the case of the claimants, his income was Rs. 600 p.m., but multiplier of only 10 has been applied. Instead of the usual amount of Rs. 15,000 only a sum of Rs. 6,200 has been awarded towards loss of consortium, etc. Thus, no fault can be found with the quantum of compensation of Rs. 35,000.

10. In Claim Petition No. 43 of 1984, only a sum of Rs. 30,000 has been granted by way of compensation inclusive of no fault liability. The said claim is on account of death of one Baburao whose age was of 19 years at the time of accident. The claim was filed by the mother and brother of the deceased. The income of the

deceased was taken by the Tribunal at the rate of Rs. 350 p.m. The dependency is taken at the rate of Rs. 200 p.m. and the multiplier of 10 has been applied. Thus, no fault can be found with the quantum of compensation of Rs. 30,000.

11. The second question which is to be decided is as regards liability of the insurance company. In the decision of the Apex Court in case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , the Apex Court held that insurance company is not liable to pay the compensation on account of death or the injuries sustained by the persons travelling in a goods vehicle either along with goods or by paying fare or even gratuitously.

12. In Claim Petition No. 120 of 1984, the widow of the deceased has merely stated that the deceased was returning from Kolhapur by a goods truck and he was bringing the goods from Kolhapur. The mother of the deceased in Claim Petition No. 65 of 1984 deposed before the Claims Tribunal that her son Sambhaji had gone to Kolhapur to bring jowar. In a Claim Petition No. 43 of 1984, the mother of the deceased stated that the deceased had gone to Kolhapur on the fateful day for bazar. If this is the evidence led by the claimants, it is obvious that the decision of the Apex Court in case of Smt. Mallawwa Etc. Vs. The Oriental Insurance Co. Ltd. and Others, , will obviously apply to the facts of the case. Tribunal was, therefore, right in exonerating the insurance company. There is no merit in the appeals.

Hence, I pass the following order:

Appeals are dismissed with no order as to costs.