
(2007) 12 BOM CK 0082
In the Bombay High Court
Case No : First Appeal No. 70 of 1996

United India Insurance Co. Ltd.

APPELLANT

Vs

Vimal Narayanrao Nandanwar and Others

RESPONDENT

Date of Decision : 10-12-2007

Acts Referred:

Citation : (2008) ACJ 2274 : (2008) 2 ALLMR 67 : (2008) 1 MhLj 626

Hon'ble Judges : C.L. Pangarkar, J

Bench : Single Bench

Advocate : A.V. Thakar, for the Appellant;

Final Decision : Dismissed

Judgement

C.L. Pangarkar, J.—This is an appeal by non-applicant No. 3 United India Insurance Company. Respondent is the claimant. Her son Kamdev was working as a casual labourer on 14-10-1991. He was working with the Central Armament Depot at Pulgaon. For the purpose of said employment on the date of incident he was travelling in vehicle No. MH-31/G-772. It is alleged that while he was so travelling in the premises of the Central Armament Depot the vehicle overturned and Kamdev died on the spot. It is alleged that the vehicle was being driven rashly and negligently. Matter was reported by the Engineer of respondent No. 1 Company to whom the tractor belonged, to the police. Offence was registered against respondent No. 2 the driver of the said vehicle. It is alleged that the deceased was earning Rs. 1000/- to 1200/- per month and since he has died the mother who is claimant has filed the application.

2. Respondent No. 1 the owner of the vehicle filed a Written Statement and resisted the application on several grounds. Respondent denies that the accident had taken place due to rash and negligent driving. It is the contention of the respondent No. 1 that he had given specific instructions to the driver not to carry any labourers in the vehicle, in spite of that he did so and therefore respondent No. 1 is not liable to pay any compensation. It is the contention of the

respondent No. 1 that respondent No. 3, the insurance company is liable to pay the compensation. The respondent No. 3, main contention was that some 25 coolies were travelling in the said tractor and therefore there was a breach of the condition of policy and respondent No. 3 Insurance Company therefore stands exonerated.

3. Learned Judge of the Tribunal found that the accident had taken place due to rash and negligent driving and he also found that the breach of the condition was not such as to disentitle the applicant claimant from claiming compensation. He awarded compensation of Rs. 60,000/- and being aggrieved by that order this appeal has been preferred.

4. I have heard the Learned Counsel for the appellant Mr. Thakur. None appears for the respondent.

Shri Thakur Learned Counsel raised two points before me, first according to him there was a breach of the condition of the policy inasmuch as the tractor was found carrying more than 20 coolies instead of permitted 6. Second ground upon which he challenges the award is that persons travelling in the tractor were gratuitous passengers and therefore there was breach of the condition of the policy.

5. Following points arise for my determination and I am recording my findings on them:

1. Whether there was a breach of condition of policy? Yes. 2. Whether such breach of condition of policy was such as to exonerate the Insurance Company? No.

REASONS:

6. The First Information Report lodged by the employee of the owner i.e. non-applicant No. 1 clearly indicates that about 20 to 22 labourers were travelling in the tractor trolley. Therefore, it cannot be disputed that more than 6 labourers were travelling in it. Certified copy of the policy of insurance shows that additional insurance was paid for 6 coolies to be carried in the trolley. Ordinarily therefore non-applicant No. 1 was entitled to carry only 6 coolies. There is, therefore, no doubt that more persons than mentioned in the policy were travelling in the tractor. Shri Thakur Learned Counsel submits that this breach of condition of policy is enough to completely exonerate the insurance company. He also submits that such breach of condition of policy should be strictly construed by the Court. Submission of Shri Thakur cannot be accepted. This Court in a decision reported in Shivraj Vasant Bhagwat Vs. Smt. Shevanta Dattaram Indulkar and another, observed as follows:

The terms of the policy of insurance have not to be construed strictly and to be read down to advance the main purpose of the contract. The main purpose of the policy is to indemnify the damage caused to the vehicle and the inmates, who are injured. It is plain from the terms of the insurance policy that insured vehicle

was entitled to carry six workmen excluding driver. If six persons travelling in the vehicle are assumed not to have increased any risk from the point of view of the insurance company on occurring of an accident, how could those added persons be said to have contributed to the causing of it. Admittedly, all the 11 persons in the truck were working as labourers on the quarry of the appellant, who is also owner of the truck. Merely because 4/5 labourers more than agreed six labourers were taken in the truck, it cannot be said to be such fundamental breach that the owner should in all events be denied the indemnification. The breach of the insurance policy or the misuse of the vehicle may somewhat be irregular, but not illegal as it is not so fundamental in nature so as to put an end to the contract.

The facts of that case are almost identical with the case at hand. In the reported decision the truck was being used to carry crushed stone and was carrying coolies exceeding 6 in number. In the instant case also the tractor was being used for the construction work and coolies were being carried in it. In view of the observations of this Court, it has to be held that breach of condition of policy is not so fundamental in nature as to put an end to the contract. This plea therefore is of no avail to the appellant insurance company. Other thing that has to be taken into consideration is that when such breach is committed the insurance company has a right to proceed against the insured but it cannot avoid its liability as far as third party is concerned. This defence therefore cannot be said to be available to the Insurance Company.

7. Shri Thakur then contended that the tractor was carrying gratuitous passengers and not the coolies. He submitted that if tractor was carrying gratuitous passengers in vehicle which is essentially a goods carrier and it is a very serious breach of condition of policy and therefore on that ground at least the Insurance Company should be exonerated. After having gone through the First Information Report lodged, it is very clear that persons who were travelling in the tractor trolley were not gratuitous passengers as such, but were coolies who were working in the Central Armament Depot on the work being carried out by non-applicant No. 1. It is not that they were collected by the driver of the tractor on his way to some other place but they were essentially carried as labourers for reporting to the work. As such on fact it is clear that the persons travelling in the tractor trolley were not passengers as such but were essentially coolies. This argument also therefore has no force. There is, therefore, no substance in the appeal. It is dismissed with costs.