



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1175 OF 2010**

|                             |   |                     |
|-----------------------------|---|---------------------|
| <b>Vijay Arvind Pore</b>    | } |                     |
| R/o.562, Ganpati Aali, Wai, | } |                     |
| Taluka-Wai, District-Satara | } | <b>...Appellant</b> |

*Versus*

|   |   |
|---|---|
| <b>1. Rupali Ramdas Deshmukh</b>          | } |
| <b>2. Shravankumar Ramdas Deshmukh</b>    | } |
| <b>3. Shri.Anandrao Gulabrao Deshmukh</b> | } |
| <b>4. Muktabai Anandrao Deshmukh</b>      | } |

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| Applicant No.2-Minor through  | } |
| Applicant No.1. Mother-Rupali | } |
| Deshmukh                      | } |

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| All R/o Randullabad, Taluka- | } |
| Koregaon, District-Satara    | } |

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|---|---|-----------------------|
| <b>5. The New India Insurance Company</b> | } |                       |
| Office at Sagirwadi, Near Post Office     | } |                       |
| Wai, Taluka-Wai, District-Satara          | } | <b>...Respondents</b> |

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Mr.Priyal G. Sarada, for the Appellant.  
Mr.Pramod J. Pawar, for Respondent Nos.1,2 and 4.  
Ms.Jyoti Bajpayee, for Respondent No.5.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 4 MAY 2023**

**JUDGMENT :-**

. The issue involved in this Appeal is liability is fixed

on the owner of offending vehicle.

2. It is contention of the learned counsel for the Appellant that the offending vehicle was insured with Respondent No.5. While deciding the Claim Petition the Tribunal has held that at the time of the accident, the offending vehicle was carrying hazardous good i.e. gas cylinder. The driver of offending vehicle was not holding driving license of carrying hazardous goods. It was breach of terms of Insurance Policy, on that basis, Tribunal has directed the Appellants to pay the compensation to the Claimants by exonerating the Insurance company.

3. The learned counsel further submits that no witness was examined before the Tribunal to prove that at the time of accident, gas cylinders were carried in the offending vehicle, but this fact is not considered by the Tribunal.

4. It is contention of the learned counsel for Respondent No.5-Insurance Company that at the time of the accident, the driver of offending truck was not holding effective and valid driving license for carrying hazardous goods. Insurance Company has examined RTO Officer to prove the defense. Learned counsel further submits that, it is mentioned in the spot panchnamma that the offending vehicle was carrying hazardous

goods i.e. gas cylinders, on that basis, the Tribunal has passed order, which is legal and valid and no interference is required in it.

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

6. The issue involved in this Appeal is whether, at the time of the accident, the offending truck was carrying hazardous goods i.e. gas cylinders or not and whether driver had effective and valid license at the time of the accident.

7. It is Claimants' case that on 9 March 2004 at 6.45 p.m. on Pune Bangalore Highway, deceased Ramdas Deshmukh was riding on his motorcycle, he was proceeding from Satara to Pune. He was riding his motorcycle by observing traffic Rules and in slow speed. When he came in limits of Wadhe Village, one bullock cart was coming from Pune side. At the same time one truck was proceeding from Satara to Pune. The driver of offending truck, when noticed that a bullock cart is coming from opposite side, he tried to overtake the motorcycle of deceased Ramdas and in order to avoid the accident, Ramdas has taken his motorcycle towards his right side. But truck driver came from right side and gave dash to the motorcycle of the Ramdas and

bullock cart. Due to said dash, Ramdas died on the spot. After investigation, an offence was registered against driver of offending truck.

8. While dealing with the issue of fixing liability of compensation, the Tribunal has observed that at the time of the accident, the offending truck was not having permit to carry hazardous goods, there was no endorsement on driving license of the driver to drive hazardous goods. Breach is committed by the owner of the truck and there is breach of terms and conditions of insurance policy therefore Insurance Company not liable to pay the compensation to the Claimants but the Appellant/owner is responsible to pay compensation to the Claimants.

9. I am unable to understand the observations of the Tribunal, as on which basis the Tribunal came to the conclusion that at the time of the accident the said truck was carrying hazardous goods i.e. gas cylinders.

10. No witnesses examined by the Claimants or Insurance Company have stated that at the time of accident there were gas cylinders in the offending truck. The spot panchanamma is at Exhibit-38, Spot panchamma shows that there was name of Bharat Gas Company on offending truck and the said truck was used for transport of gas cylinders.

11. It appears from record that mere mentioning name of Bharat Gas on offending truck, the Tribunal has concluded that at the time of the accident, the said truck was carrying gas cylinders and, on that basis, the Tribunal has held that there is breach of terms and conditions of Insurance Policy. It is contention of learned counsel for Insurance Company that driver of offending truck was not holding effective and valid driving license at the time of accident. To prove the defence, the Insurance Company has examined DW-1 Sambhaji Redkar at Exhibit-19, Officer from RTO Office. He has stated that driver of the offending truck was possessing license of heavy goods vehicle which is at Exhibit-93. But there was no endorsement on the said license in respect of carrying hazardous goods.

12. In my view, from the evidence on record, no where it has come on record that at the time of the accident the offending truck was carrying hazardous goods i.e. gas cylinders. The Claimants have examined two eye witnesses who saw the incident, they have stated that they saw the accident and the offending truck gave dash to the motorcycle of deceased. In spot panchnamma, it is mentioned that Bharat Gas name was written on the offending truck and said truck was used for carrying gas cylinders and, on that basis, the Tribunal has come to conclusion that on the day of accident said truck was carrying gas cylinders.

13. In my view, it is not necessary that at all the time the truck was filled with gas cylinders. The spot panchanamma which was prepared after three to four months of the accident, does not show that offending truck was carrying gas cylinders at the time of the accident. Without any evidence, the Tribunal has erroneously held that at the time of the accident the offending truck was carrying gas cylinders. The driver of offending truck was holding effective and valid license of driving heavy vehicle but there was no endorsement on it for carrying hazardous goods and, on that basis, liability is fixed on Appellant, which is erroneous. No evidence is produced on record by the Insurance Company nor any suggestion was given by the learned counsel for the Insurance Company to the eye witnesses that at the time of the accident, the offending truck was carrying gas cylinders. There is no breach of terms and conditions of Insurance Policy.

14. At the time of the accident the offending truck was insured with Insurance Company. As observed above there is no breach of terms and conditions of the Insurance Policy. Hence, Insurance Company is liable to pay compensation and I pass following order.

### **ORDER**

- (i) The Appeal is allowed.
- (ii) The order passed by the Tribunal is modified as under:-

“The Insurance Company is liable to pay compensation as fixed by the Tribunal”

(iii) The Insurance Company shall deposit the compensation amount along with accrued interest thereon, within eight weeks after receipt of the order.

(iv) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(v) All pending Civil Applications, if any, are disposed of.

**(SHIVKUMAR DIGE, J.)**