

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

FIRST APPEAL NO. 458 OF 1999

M/s New India Assurance Co. Ltd. .. Appellant

Versus

Meera W/o Shriram Mahajan
and Others .. Respondents

Shri V. N. Upadhye, Advocate for the Appellant.

Respondent No. 1 served.

Shri Gulam Mustafa, Advs. for Respondent No. 2.

Shri G. V. Wani, Advocate for the Respondent No. 3.

Shri S. V. Kulkarni, Advocate for the Respondent No. 4.

CORAM : S. V. GANGAPURWALA, J.

DATE : 20TH AUGUST, 2015.

PER COURT :

1. Mr. Upadhye, the learned counsel for the appellant submits that, when the owner himself is not made liable to pay the compensation amount, the Insurance company could not have been made liable. It is only if, the owner of the vehicle is liable then, the Insurance company can be made liable. The very tenor of the judgment itself shows that, the owner has been exonerated from the liability. On that count even the present appellant should have been exonerated. When the insured himself is not liable, insurer can not be made liable. This basic principal has not been considered by the Tribunal.

2. Mr. Wani, the learned counsel for the owner states that, the owner had given the vehicle for repairs in the garage of

Respondent No. 1, who was driving the said jeep, as such the owner is not liable.

3. Mr. Mustafa, the learned counsel states that, the Respondent No. 2 was driving the vehicle with the consent of Respondent No. 3 i.e. owner.

4. I have considered the submissions canvassed by the learned counsel for the respective parties.

5. The aspect that unless the owner is liable i.e. the insured is liable, insurer can not be made liable need not be debated. However it would appear that, the owner is erroneously exonerated, nor the driver nor, the owner has stepped into the witness box to prove their case. It is also no where the stand that, the Respondent No. 2 had not authorized or consented for the Respondent No. 1 to take vehicle on road. No such positive pleadings appear in the written statement. Considering the said fact the Respondent No. 2 also is liable jointly and severally alongwith present insurance company.

6. Considering the above, the first appeal is partly allowed to the extent that the present Appellant / Original Opponent No. 4 is jointly and severally liable to pay the compensation amount as directed by the Motor Accident Claims Tribunal alongwith present Respondent Nos. 1 and 2 / Original Opponents 1 and 2. No costs.

[S. V. GANGAPURWALA, J.]