

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

FIRST APPEAL NO. 1191 OF 2011

New India Assurance Co. Ltd.
Through Branch Manager .. Appellant

Versus

Gopal Pandurang Kaspate and
another .. Respondents

Shri Dhananjay P. Deshpande, Advocate for the Appellant.
Shri Suhas B. Ghute, Advocate for the Respondent No. 1.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 09TH OCTOBER, 2015.**

PER COURT :

. Mr. Deshpande,, the learned counsel submits that, while passing the award, the Tribunal has passed an order of pay and recover. The driver of the vehicle was not holding driving license. He was under the influence of liquor. The evidence to that effect has been produced. It is a case of breach of policy. According to the learned counsel, the Tribunal ought to have exonerated the Insurance company in toto and ought not have directed to pay the amount first and recover from the owner.

2. Mr. Ghute, the learned counsel relies on the judgment of the Apex Court in the case of **S. Iyyapan Vs. M/s United**

India Insurance Co. Ltd. and another reported in **AIR 2013 SC 2262** and submits that, in such a case pay and recover order is legal and proper.

3. The present case would be completely covered by the judgment of the Apex Court in the case of **S. Iyyapan Vs. M/s United India Insurance Co. Ltd. and another** referred to supra.

4. In the light of that, the Tribunal has not committed any error in passing the impugned order. The order is rightly passed. As such, the first appeal is dismissed. No costs.

[S. V. GANGAPURWALA, J.]