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

**FIRST APPEAL NO. 761 OF 2007**

New India Assurance Co. Ltd.,
Branch manager, Parag Plaza,
Shivaji Cross Road Shrirampur,
Dist. Ahmednagar, through its
authorized signatory, Mr.
Srikant Baliram Aney,
Age : 55 years, Occu. : Service,
Div. Manager, R/o Aurangabad. .. Appellant

**Versus**

1. Rambhau @ Ramdas Gopinath Padale,
Age : 68 yrs, Occ. Agri.

2. Bhimabai Rambhau Padale,
Age : 64 yrs. Occ. Agri.

Both R/o Suresh Nagar, Ahmednagar,
Dist. Ahmednagar.

3. Arun Ramchandra Jagtap,
Age 46 yrs. Occ. Business,
R/o Newasa Phata, Sawant nagar,
Newasa, Dist. Ahmednagar. .. Respondents

Shri Dhananjay Deshpande, Advocate for the Appellant.
Shri Ram Deshpande, Advocate for Respondent Nos. 1 and 2.
The Respondent No. 3 is served.

**CORAM : S. V. GANGAPURWALA, J.**
**DATE : 06TH OCTOBER, 2015.**

**<u>ORAL JUDGMENT</u> :-**

. The present respondent Nos. 1 and 2 had filed application for compensation U/Sec. 166 of the Motor Vehicles Act (for short "M. V. Act") on account of death of Raju S/o Ramdas Padale. The said claim petition is partly allowed. The Insurance Company has assailed the said order.

2. Mr. Deshpande, the learned counsel submits that, the driver of the vehicle was not holding driving license of a transport vehicle. According to the learned counsel the deceased was travelling as a passenger. He was not a third party. The learned counsel submits that, there was specific endorsement on the license of the driver of the jeep that the said license is for light motor vehicle (non transport). In such a case there is fundamental breach of policy and the Insurance Company ought to have been exonerated. The learned counsel relies on the judgment of the learned Single Judge of this Court in the case of **<u>Govind Vs. The Manager New India Assurance Co. Ltd.</u>** reported in ***2014(3) A.B.R. 363***. The driver of the other vehicle was not made party.

3. The learned counsel for the claimants Mr. Ram Deshpande, submits that, the Tribunal has rightly considered all the relevant aspects of the matter. The driver of the jeep had effective license.

4. I have considered the submissions. It is not disputed that the risk of the passenger is covered under the policy. In the light of that, only question would be about liability of the Insurance Company on account of the driver not possessing a license to drive a transport vehicle. The Apex Court in the case of **Oriental Insurance Co. Ltd. V/s. Angal Kol and others** reported in ***AIR 2009 S. C. 2151*** has held that, there is distinction between a person possessing license to drive light motor vehicle and license for transport vehicle.

5. In view of the fact that, it is not disputed that, the risk of the passenger was covered and only defence now is that driver of the vehicle was not possessing effective driving license. In such circumstance order of pay and recover can be passed. In the light of that, the order passed by the Tribunal is modified to the effect that the owner original opponent No. 1 is liable to pay compensation amount as awarded by the Tribunal. The Insurance Company shall pay the said amount first and recover it from the owner. Rest of the part of the order of the Tribunal stands confirmed and upheld. The first appeal accordingly is disposed of. No costs.

**Sd/-**
**[ S. V. GANGAPURWALA, J. ]**

bsb/Oct. 15