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

**FIRST APPEAL NO. 1928 OF 2010
WITH
CIVIL APPLICATION NO. 8573 OF 2008
CIVIL APPLICATION NO. 4706 OF 2015**

The Oriental Insurance Company Ltd.
Branch Dhule, Through it's General Manager,
Lane No. 2, Near Lal Baag Maruti Temple,
Dhule-424 001. ...Appellant

versus

1. Smt. Mirabai w/o Chhagan Chaudhary,
Age: 54 years, Occ: Household work,

2. Prakash Chhagan Chaudhary,
Age: 39 years, Occ:Service,

3. Sunil Chhagan Chaudhary,
Age: 31 years, Occ: Service,

(No. 1 to 3 R/o. Teli Galli,
(Bagwan Lane) Nandurbar.

4. Dilip Chhagan Chaudhary,
Age: 35 years, Occ: Service,
R/o. S-2-6/1/4 Swami Nagar,
Near Vivekanand Nagar,
Rane Nagr Bus Stop, CIDCO
Nashik – 422 009.

(Respondent No. 4 dismissed as per
order dated 01/02/13)

5. Sau. Surekha Gulabrao Chaudhary,
Age: 33 years, Occ: Household,
R/o. Plot No. 4, Nandnagari Housing
Society, Near G.T.P. College,
Nandurbar.

6. Shri. Devindar Singh Mohan Sing,
Age: Major, Occ: Business,
R/o. Golden Punjab Hotel,
Dahisar, Tq. & Dist. Thane
OR

6/5/190, Washi, Navi Mumbai,
Dist. Thane.

(R. No. 6 dismissed
as per order dtd. 01/02/13)

7. Shri. Shitaram G. Shirke,
Age: Major, Occ: Business,
R/o. 7/300, Shiv Kiran Co-op.
Society, Shivaji Nagar, Worli,
MUMBAI-400025. ...Respondents

Mr. U.S. Malte, Advocate for appellant
Mr. M.M. Bhokarikar, Advocate for respondent Nos. 1 & 2

WITH

FIRST APPEAL NO. 1988 OF 2010
WITH
CIVIL APPLICATION NO. 8571 OF 2008
CIVIL APPLICATION NO. 4705 OF 2015

The Oriental Insurance Company Ltd.
Branch Dhule, Through General Manager,
Lane No. 2, Near Lal Baag Maruti Temple,
Dhule-424001. ...Appellant

versus

1. Smt. Dhagubai w/o Pitambar Chaudhary,
Age: 60 years, Occ: Household,

2. Bhaskar Pitambar Borase (Chaudhary)
Age: 45 years, Occ:Service,

(Nos. 1 & 2 R/o. House No. 4013-B,
Lane No.2, Deopur, Dhule)

3. Bhagwan Pitambar Borase (Chaudhary)
Age: 43 years, Occ: Service,
R/o. Bajaj Building, Second Floor,
Vasai, Post Navghar, Tal. Vasai,
Dist. Thane.

4. Suresh Pitambar Borse (Chaudhary)
Age: 22 years, Occ: Agri., & abourer,

5. Devidas Pitambar Borse (Chaudhary)
Age: 36 years, Occ: Agri. & Labour,

(Nos. 4 & 5 R/o. 4013-B, Lane No.2,
Deopur, Dhule-424002)

6. Lalchand Pitambar Borase (Chaudhary),
Age: 28, Occ: Government Polytechnic
Jalgaon.

7. Sau. Lilabai Uttamchand Chaudhary,
Age: 49 years, Occ: Household,
R/o. Gudhe, Tal. Bhadgaon,
Dist. Jalgaon.

8. Sau. Kalawati Bhagwan Chaudhary,
Age: 47 years,Occ: Household,
R/o. Chirane, Tal. Bhadgaon,
Dist. Jalgaon.

9. Sau. Latabai Rajendra Chaudhary,
Age: 38 years, Occ: Household,
R/o. Pardeshi Lane, Erandol,
Dist. Jalgon.

10. Shri. Devindar Singh Mohan Sing,
Age: Major, Occ: Business,
R/o. Golden Punjab Hotel,
Dahisar, Tq. & Dist. Thane
OR
6/5/190, Washi, Navi Mumbai,
Dist. Thane.

11. Shri. Shitaram G. Shirke,
Age: Major, Occ: Business,
R/o. 7/300, Shiv Kiran Co-op.
Society, Shivaji Nagar, Worli,
MUMBAI-400025.

(R. Nos. 3,10 & 11 dismissed
as per order dtd. 01/02/13) ...Respondents

Mr. U.S. Malte, Advocate for appellant
Mr. K.C. Sant, Advocate for respondent Nos. 2,3, 5 & 8

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WITH

FIRST APPEAL NO. 2566 OF 2010

WITH
CIVIL APPLICATION NO. 8587 OF 2008
CIVIL APPLICATION NO. 4708 OF 2015

The Oriental Insurance Company Ltd.
Branch Dhule, Through General Manager,
Lane No. 2, Near Lal Baag Maruti Temple,
Dhule-424001. ...Appellant

versus

1. Smt. Gjarabai w/o Ratan Choudhary,
Age: 55 years, Occ: Household,
R/o. Main Road, Khapar,
Tq. Akkalkuwa, Dist. Nandurbar.

2. Rajendra s/o Ratan Choudhary,
Age: 36 years, Occ: Service,
R/o. Main Road, Khapar,
Tq. Akkalkuwa, Dist. Nandurbar.

3. Narendra s/o Ratan Choudhary,
Age: 28 years, Occ: Household,
R/o. Main Road, Khapar,
Tq. Akkalkuwa, Dist. Nandurbar.

4. Sau. Sunita w/o Dilip Chaudhari,
Age: 33 years, Occ: Household,
R/o. Sulwani Park,
near Master Bakery, Vastu Udyog Nagar,
Pimpri, Dist. Pune.

5. Sau. Sangita Dilip Choudhary,
Age: 30 years, Occ: Household,
R/o. G.T.P. Colony, Deopur,
Dhule-424005, Tq. & Dist. Dhule.

6. Shri. Devindar Singh Mohan Sing,
Age: Major, Occ: Business,
R/o. Golden Punjab Hotel,
Dahisar, Tq. & Dist. Thane
OR
6/5/190, Washi, Navi Mumbai,
Dist. Thane.

7. Shri. Shitaram G. Shirke,
Age: Major, Occ: Business,
R/o. 7/300, Shiv Kiran Co-op.
Society, Shivaji Nagar, Worli,
MUMBAI-400025.

(R. Nos.1 to 3, 5 & 7 dismissed as per order dtd. 01/02/13) ...Respondents

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Mr. U.S. Malte, Advocate for appellant

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CORAM : N.W. SAMBRE, J.

DATE : 24th APRIL, 2015

ORAL JUDGMENT :

All these appeals are preferred by the same appellant and on the same issue which are arising out of the award delivered by the Motor Accident Claims Tribunal, Nandurbar. The appeals are heard and disposed of together.

2. The facts as are necessary for deciding the appeals are as under.

In First Appeal No. 1988 of 2010 the accident took place between Truck and Ambassador Car on 25/02/1999 resulting into death of one Pitambar, whose legal heirs brought into action Motor Accident Claim Petition No. 116 of 2004 under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/-. The said claim petition came to be allowed on 29/02/2008 whereby the claims tribunal has granted compensation of Rs.95,000/- with interest @8% p.a.

3. In First Appeal No. 1928 of 2010 the appeal is arising out of the same accident as narrated herein above. In view of death of Chhagan, claim for compensation of Rs. 2,00,000/- was made against which, the tribunal granted Rs.1,21,000/-.

4. In First Appeal No. 2566 of 2010 the claim for compensation in view of death of Ratan claiming compensation of Rs.2,00,000/- was made against which the tribunal has granted compensation of Rs. 1,21,000/-.

5. Heard Mr. Malte, learned Counsel for the appellant. The common ground is raised by the insurance company. According to learned Counsel for insurance company, while resisting the claim for grant of compensation, the defence was set up as regards the false and fabrication of insurance policy and as such, inadmissibility of the claim was questioned. According to learned Counsel for the insurance company, though sufficient evidence was brought on record demonstrating violation of terms of policy, same was appreciated in perverse manner by the tribunal and as such, he has sought indulgence. According to him, the appeal is liable to be allowed.

6. Learned Counsel for the claimants has supported the judgment delivered by the claims tribunal.

7. With the assistance of respective Counsel, I have perused the record and proceedings and it is noted that before the tribunal, insurance company has filed reply denying averments in the claim petitions including that of age, occupation, insurance of offending vehicle. It is stated in written statement that neither offending truck nor offending Ambassador Car was insured with the appellant. The appellant has given details as regards the insurance of the vehicle which were insured against the alleged policy/certificate placed on record. Apart from above, the tribunal has relied upon the evidence of the claimants, copy of the complaint, spot panchnama, inquest panchnama etc. The evidence in all these matters was recorded together.

8. It is required to be noted that the insurance company has examined Mr. Vijay Kamle, Senior Assistant in M.A.C.P. No. 113 of 2004 who was working in Division Office No. 9 at Mumbai. According to him, it was practice in the office of insurance company to mention year and number of the earlier policy in subsequent certificate cum policy. It is further claimed by him that the certificate of insurance

policy cannot be issued by the same number twice. According to him, the documents of the insurance which are produced on record so as to support claim at Exhibits-60 and 71 are forged documents.

9. It is required to be noted that while analyzing whether the insurance policies at Exhibits-60 and 71 are genuine policies or not, the document at Exhibit-60 bears Office Code No. 121800, Policy No. 1999/33 which was issued for the period from 05/11/1998 to 04/11/1999 bearing Collection No.84 and date of collection was 04/10/1998 which was subsequently endorsed as 05/10/1998 by the authorized signatory. It is required to be noted that the said certificate bears details as regards seal of the Company and signature of the authorized person. It is further required to be noted that the date of collection of premium for policy at Exhibit-60 was 04/10/1998 and the policy was for the period 05/10/1998 to 04/10/1999.

10. So far as policy at Exhibit-71 is concerned, Office Code is 121800 and Policy No.199/33 for the period 02/04/1998 to 01/04/1999 and the date of collection of premium was 02/04/1998. It is claimed that same was in respect of some other vehicle. DO No. 49 and 47 mentioned at Exhibit-60 was not matching.

11. The appellant has produced registers containing entries

as regards the premium through one Buddhadev, Branch Manager of DO-17 bearing Office Code No. 111800. The said premium was for the period 01/04/1998 to 31/03/1999. However, it is noted that the register for premium was of the Office Code No. 11800 and not Office Code No. 121800. The premium register of Office Code No. 121800 was not produced. In view of same, the contention of the appellant that Exhibit-60 was false and fabricated document/certificate, so also the policy at Exhibit-71, was not established as sham and bogus. The insurance company has failed to discharge its burden which in law is casted on the insurance company. The evidence of Vijay Kamle also does not repose any faith particularly in the matter of establishing the case of the appellant as regards false and fabricated document. In the certificates which were produced at Exhibits-64 and 71 the insurance company itself has produced two different policies in respect of different vehicles issued by same number i.e. Policy No. 1999/33 as is apparent from the documentary evidence which was placed on record.

12. In view of above, it could be easily inferred by this Court that the claim set up by the appellant insurance company that the policy in question or certificate of insurance against which the claim was lodged was bogus document, was not established and the appellant has failed to discharge its burden to that effect.

13. Upon analyzing the observations made by the tribunal particularly in the wake of above referred evidence in the back ground of pleadings and documentary evidence, it is required to be noted that the tribunal has rightly given findings that the policy at Exhibit-60 was not proved to be false and fabricated.

14. Once it is held that Exhibit-60 was not found to be false and fabricated document then the appellants herein are left with other no option but to honour the claim.

15. In view of above observations, in my opinion, no case for interference in the first appellate Court's jurisdiction is made out. The appeals fail, same stand dismissed. Consequently, civil applications stand disposed of.

[**N.W. SAMBRE, J.**]

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