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

**FIRST APPEAL NO.1643 OF 2013**

United India Insurance Company Ltd.,
Through its Divisional Office,
Divisional Manager,
Ahmednagar ..**APPELLANT**
(Orig. Respondent No.3)

**VERSUS**

1. Arjun S/o Peeraji Bansode,
   Age : 55 years, Occu.: Nil,
   R/o Paregaon Gadakh,
   Tq. Sangamneir, Dist: Ahmednagar.

2. Sau. Ashabai W/o Sanjay Bansode,
   Age : 28 years, Occu.: Nil,
   R/o Walaki, Tq. Rahata
   Dist: Ahmednagar.

3. Abbas S/o Sanjay Bansode,
   Age : 7 yrs, Occu.: education,
   R/o Walaki, Tq. Rahata
   Dist: Ahmednagar.

4. Ganesh S/o Sanjay Bansode
   Age : 5 yrs. Occu.: Education,
   R/o Walaki, Tq. Rahata
   Dist: Ahmednagar.

   Resp Nos. 3 & 4 are minors &
   U/g of resp no.2 who is real
   Mother of them. R/o as above
   & summons be served through
   Respondent no.2

5. Balasaheb S/o Bhimrao Tilakhe
   Age : major, Occu.: business,
   R/o:Dongar pimpla, Tq. Gangakhed,
   Dist: Parbhani (vehicle owner)

6. Raghunath S/o Ramrao Tilakhe,
   Age : major, Occu.: driver,
   R/o Dongar pimpla, Tq. Gangakhed,
   Dist: Parbhani (vehicle driver) ..**RESPONDENTS**

(R.No. 1 to 4 Orig. Claimants,
R. No. 5 and 6 are Orig. resp)

...

Mr. Sudhir V. Kulkarni, Advocate for Appellant;
Mr. K.N. Shermale, Advocate for Respondent Nos.1 to 4

...

**CORAM : P.R.BORA, J.**
**DATE : 20th April,2016.**

**ORAL JUDGMENT :**

1) The Insurance Company has filed the present appeal, taking exception to the judgment and award passed by the Motor Accidenct Claims Tribunal at Sangamneir, Dist. Ahmednagar on 13.09.2015 in MAC Case No.87/2006. The only objection raised by the Insurance Company is that, the Tribunal ought not have saddled any liability on the Insurance Company and ought not have passed an order directing the Insurance Company to first pay the amount of compensation and then to recover the same from the insured.

2) Mr. S.V.Kulkarni, the Learned Counsel appearing for the appellant Insurance Company submitted that, at the time when alleged accident happened around twelve passengers were travelling through Jeep. Learned Counsel submitted that, the offending vehicle was goods carrying vehicle, in which only two persons were allowed to travel. Learned Counsel further submitted that, the Insurance Company has sufficiently proved before the Tribunal that, at

the relevant time, the owner of the said Jeep had given the Jeep on hire and that total twelve passengers were travelling from the said Jeep, when the accident happened. According to the learned Counsel, this was a clear breach of the terms of policy condition, and as such, the Insurance Company was not liable to indemnify the insured. Learned Counsel, therefore, prayed for setting aside the impugned Judgment and Award so far as it relates to direction given to the appellant Insurance Company to pay to the claimants the amount of compensation at the first instance and then to recover the same from the insured.

3) Mr. K.N.Shermale, the learned Counsel appearing for the original claimants resisted the submissions advanced on behalf of the appellant / Insurance Company. The learned Counsel brought to my notice that, at the relevant time, deceased Sanjay was proceeding on his motorcycle and was dashed by the offending Jeep. Learned Counsel submitted that, it was the specific contention of the claimants before the Tribunal that, the driver of the said Jeep was rash and negligent in driving the Jeep, which ultimately resulted in occurrence of the alleged accident. Learned Counsel submitted that, deceased Sanjay was not the occupant of the

said Jeep or the employee on the said Jeep. As such, according to learned Counsel, the objections raised by the Insurance Company are irrelevant.

4) On perusal of the material on record there appears substance in the argument advanced on behalf of the original claimants. How many passengers were being carried in the offending Jeep at the relevant time or whether any other term of policy condition was breached by the insured of the said Jeep has nothing to do with the death of deceased Sanjay Bansode in the alleged accident. Admittedly, deceased Sanjay was proceeding on his motorcycle and was dashed by the driver of the offending Jeep. Deceased Sanjany was neither the occupant in the said Jeep, nor was employed as a driver or a cleaner on the said Jeep so as to enable the Insurance Company to take a defence that, deceased was not a third party so as to cover his risk. Admittedly, deceased Sanjay was a third party and when insurance policy was in force, the Insurance Company was liable to cover the risk and to pay the amount of compensation to the legal representatives of accused Sanjay.

5) Further, from the material on record, it is quite clear that, the appellant Insurance Company has not brought

on record any such evidence and has not proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling of the condition of the policy regarding the use of the offending vehicle. It is further not the case of the appellant Insurance Company that, the breaches alleged by the appellant Insurance Company on part of the insured have contributed to the cause of accident. The appellant Insurance Company has thus, failed in making out any case for causing interference in the impugned Judgment and Award. The appeal is devoid of any substance. In the result the following order.

ORDER

a) The appeal is dismissed with Costs.

**(P.R.BORA)**
**JUDGE**

SPR