IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

FIRST APPEAL NO. 105 OF 2000

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

Versus

Smt. Asha w/o. Suresh Ghatvisave
and others **....Respondents.**

Mr. V.N. Upadhye, Advocate for appellant.

Mr. C.R. Deshpande, Advocate for respondent No. 1.

Mr. V.S. Bedre, Advocate for respondent No. 2.

Mr. P.S. Pawar, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.
Reserved on : 8th January, 2016.
Pronounced on : 8th February 2016.

ORDER :

1. The appeal is filed by Insurance Company to challenge the judgment and award of Claim Petition Nos. 113 and 114 of 1990. These claim petitions were pending before the Claims Tribunal, Beed and they had arisen out of the same accident and in respect of the same victim and they are decided by the common judgment by the Tribunal. Both the sides are heard for final disposal at admission stage.

2. The contentions made in the appeal and submissions made by the learned counsel for Insurance Company show that

that the Insurance Company is not disputing the quantum of compensation. Meager amount of compensation viz. Rs. 93,400/- is awarded by the Tribunal when the age of the deceased was around 25 years and the claimants were widow, aged about 20 years, parents and sisters. The accident took place in the year 1990.

3. It is the case of Insurance Company that in the offending vehicle, truck, marriage party, fair paying passengers were being carried and so, there has been breach of conditions of policy. Deceased was on his bicycle and dash was given to bicycle by the truck, transport vehicle. The learned counsel for Insurance Company submitted that in such a case Insurance Company is entitled to recover the amount from the owner if it is required to pay to the claimants.

4. No record was called and both the sides argued on the basis of evidence discussed in the judgment of the Tribunal. It appears that the aforesaid defence was taken by the Insurance Company, but no evidence at all was given to prove this contention. No issue was framed in respect of this defence. In any case, the deceased was third party and in view of this circumstance, it was necessary for the Insurance Company to

prove that the so called breach was fundamental in nature due to which it is not liable to indemnify the owner or it is entitled to recover the amount from the owner due to breach of conditions of policy. As there is nothing on record to prove such defence, this Court holds that it is not possible to interfere in the decision given by the Tribunal.

5. The learned counsel for Insurance Company has placed reliance on the cases reported as **2015 STPL (Comp.) 323 HYDERABAD HIGH COURT [Bajaj Allianz General Insurance Co. Ltd., Visakhapatnam Vs. Katragadda Vijaya Lakshmi]** and **2015 STPL (Comp.) 876 ANDHRA PRADESH HIGH COURT [Karri Krishna Mohan Vs. Kuppili Guddemma & Anr.].** These cases were totally on different point. There was the defence that the driver was not holding valid and effective driving licence in respect of offending vehicle. Such breach of condition of policy was proved and it was held that Insurance Company was entitled to recover the compensation amount from the owner after making payment to victim. Thus, the facts of those reported cases were different. In view of the facts and circumstances of the present case, this Court holds that no such interference is possible and there is no need to admit the appeal.

6. In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/