

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

FIRST APPEAL NO. 139 OF 2002
WITH
CIVIL APPLICATION NO. 1644 OF 2001

The New India Assurance Company Ltd.,
having Head office and Registered office
at New India Assurance Building,
87, Mahatma Gandhi Marg, Fort,
Mumbai and Divisional office at
Aurangabad and Branch office
at Agra, Beed.

....Appellant.
(Ori. Resp. No. 3)

Versus

1. Babu s/o Keru Salve
Age 67 years, Occ. Labourer,
R/o Takalibhan, Tq. Shrirampur,
District:- Ahmednagar.
2. Bhimabai w/o Baburao Salve
Age 52 years, Occ and R/o as above.
3. Vasant s/o Baburao Salve
Age 37 yers, Occ. Service,
R/o. Bombay.
4. Madhukar s/o Baburao Salve
Age 32 years, Occ.Labourer,
R/o. Taklibhan, Tq. Shrirampur,
District;- Ahmednagar.
5. Jaibai w/o Bansi Salve
Age 42 years, Occ. and R/o. as above
6. Sangeeta d/o Bansi Salve
Age 20 years, R/o as above.
7. Aneeta d/o Bansi Salve
Age 18 years R/o as above.

8. Jaising s/o Bansi Salve
Age 14 years (minor u/g of Jaibai
Respondent no 5 who is a real mother.)
9. Smt. Harbachan Kaur w/o
Baldeo Singh Sodhi,
Age 44 years, Occ. Household and
business, R/o. 856,30th Main T Blck,
Gayanagar, Bangalore. [Dismissed (Ori. Resp. No.1)
as per order dt. 10.12.15.]
10. The Oriental Insurance
Companmy Ltd, 25/27, Asaf Ali road,
New Delhi and Unit office
at Bangalore.
(Deleted as per order dt. 16.12.2015) (Ori. Resp. No.2)
....Respondents.

Mr. S.L. Kulkarni, Advocate, for appellant.

Mr. C.K. Shinde, Advocate, for Respondents No.1 to 8.

CORAM : T.V. NALAWADE, J.

DATED : 14th January, 2016.

JUDGMENT :

1) The appeal is filed by the Insurance Company to challenge the judgment and award of Claim Petition No. 45/1988, which was pending before the Claims Tribunal, Beed. The Tribunal has granted compensation and the Insurance Company, present appellant is held liable to indemnify the owner of the offending vehicle. The Insurance Company has challenged the decision on the ground that there was no convincing evidence to prove the insurance of the vehicle. Heard learned counsels for both the sides.

2) It appears that initially the claim was made against the owner and Oriental Insurance Company. Then Oriental Insurance Company pointed out that the vehicle was probably insured with the present appellant and not with Oriental Insurance Company. Steps were taken to add present appellant as a party respondent in claim proceeding and appellant came to be added as respondent. Original respondent, present appellant filed written statement and contended that there was no insurance details furnished and so, it was not possible to verify the insurance. Alternate defence was taken that it will take all the defences available against the owner if the fact of insurance is proved.

3) The claimants gave evidence and claimants relied on the R.T.O. particulars produced at Exh. 35. The R.T.O. particulars show that the offending vehicle was insured with present appellant for the period from 1.7.1987 to 30.6.1988. The certificate number was also mentioned in R.T.O. particulars. Even when this record was produced, the Insurance Company did not take care to give evidence in rebuttal. As there was nothing in rebuttal, there was no alternative before the Tribunal than to fasten the liability on the Insurance Company. Thus, it is not

possible to interfere in the decision of the Tribunal given against the Insurance Company.

4) There is not much dispute over the quantum of compensation and further meager amount of Rs. 72,000/- is awarded in respect of death of one Bansi, who was aged about 31 years. The claim was made by the widow, minor issues and parents of deceased. The accident had taken place on 18.9.1987.

5) The learned counsel for respondents/claimants placed reliance on two cases reported as **2004 (5) ALL MR 1167 (S.C.) [Pramod Kumar Agrawal & Ors. Vs. Smt. Mashtari Begum & Ors.]** and **2013 (6) ALL MR 981 (S.C.) [Sanobanu Nazirbhai Mirza & Ors. Vs. Ahmedabad Municipal Transport Service]**. He submitted that meager amount of compensation is given and under different heads like estate, loss of consortium etc. separate amounts are not given and so, amount of compensation needs to be enhanced. No appeal is preferred by the original claimants, but such submission was made. As giving of such amount in a proceeding which is appeal filed against the decision of claim petition under section 166 of Motor Vehicle Act will amount to modification of

the judgment and award, this Court holds that only on the basis of such submissions, such claim cannot be allowed. No cross objection is also filed.

6) In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/