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

FIRST APPEAL NO. 84 OF 2004

THE NEW INDIA ASSURANCE COMPANY,
LTED, Divisional Office No-2, N-3,
CIDCO, New Aurangabad, through
its Assistant Manager, Shri.

Age yrs., Occu. Service as a
Assistant Manager, New India Assurance
Co. Ltd., D.O. 2, R/o. Aurangabad. **....Appellant.**
(Ori. Resp. 3)

Versus

1. Smt. Satyabhamabai w/o. Narayan Kurhe, Age 40 yrs., Occu. Household, R/o. Sindhikalegaon, Tq. & Dist. Jalna.

2. Sanjay s/o. Narayan Kurhe, Age 18 yrs., Occu. Business, R/o. As above.

3. Vithal s/o. Narayan Kurhe, Age 16 yrs., Occu. Business, R/o. As above.

   (No. 2 & 3 are minors u/g. of the respt No. 1) **...Respondents** (Ori. Claimants Nos. 1 to 4)

4. Sakhubai w/o. Ghanshyam Kurhe, Age 72 yrs., Occu. Nil, R/o. As above.

5. Sk. Isaq s/o. Sk Rahman, Age 45 yrs., Occu. Business, R/o. Kanadgaon, Tq. Ambad, Dist. Jalna.

6. Sk. Raheman s/o. Sk. Noor Mohd. Age 25 yrs., Occu. Driver, R/o. Ambad, Dist. Jalna. **...Respondents** (Ori. Resp. Nos. 1 & 2)

7. Sayed Karim Mohiuddin s/o. Syed Jani, Age 50 yrs., Occu. Business, R/o. Jalna, Dist. Jalna.

8. Sk. Khodu s/o. Sk. Janimiyan, Age 35 yrs., Occu. Driver, R/o. Jalna, Dist. Jalna.

9. The National Insurance Co. Ltd., through its Br. Manager, Jalna, Dist. Jalna. **....Respondents.**
(Ori. Respt. Nos. 4 to 6)

Mr. M.M. Ambhore, Advocate for appellants.

Mr. V.M. Humbe, Advocate for respondent Nos. 1 to 3.

Mrs. Surekha Mahajan, Advocate for respondent No. 5.

Mr. V.N. Upadhye, Advocate for respondent No. 9.

CORAM : T.V. NALAWADE, J.
DATED : 1st March, 2016.

JUDGMENT :

1) The appeal is filed against judgment and award of Claim Petition No. 157/1998, which was pending before the Claims Tribunal, Jalna. When two vehicles were involved in the accident, the Tribunal held the owner of one vehicle responsible and the Insurance Company of that vehicle is asked to satisfy the award and so, the said Insurance Company has filed the appeal. Both the sides are heard.

2) The accident took place on 12.11.1996 at about 2.00

p.m. on Jalna Ambad road within local jurisdiction of Tahsil Police Station, Jalna. Deceased Narayan Kurhe was present in a meta-door bearing No. MH-21/5692 which was owned by respondent No. 1 and which was insured with present appellant. It is the case of claimants that mata-door in which deceased was present, was proceeding towards Jalna and at that time, other meta-door bearing No. MWP-8770 came from Jalna side and there was virtually head on collision between the two vehicles and they dashed against each other at back portions. It is contended that police blamed the driver of vehicle in which the deceased was travelling for accident and case was filed against him. Insurance Company has not disputed the quantum and so, other contentions need not be mentioned.

3) Respondent No. 3, present appellant filed written statement and contested the matter. It contended that the driver of vehicle No. MH-21/5692 was not responsible for the accident and driver of other vehicle was responsible fro the accident. It was also contended that the vehicle was registered as goods carrier.

4) The widow of the deceased gave evidence. She has no personal knowledge regarding the accident. The claimants

placed reliance on police papers. Police papers show that after making investigation, police blamed the driver of the vehicle No. 5692 for the accident. In view of these circumstances, it was necessary for the appellant to give evidence in rebuttal. But, no such evidence was given. In view of these circumstances, there was no other alternative before the Tribunal than to hold on the basis of doctrine of *res ipsa liquitur* that the driver of vehicle No. 5692 was responsible for the accident.

5) Appellant had taken other defences as mentioned above, but no evidence at all was given by the appellant to prove that there has been breach of conditions of policy or to prove that the risk in respect of deceased was not covered under the policy. The accident report was produced to show that this vehicle was insured with the appellant. In view of these circumstances, the Tribunal has fastened liability on the Insurance Company. This Court holds that no case is made out for interference in the decision given by the Tribunal.

6) In the result, the appeal stands dismissed.

[T.V. NALAWADE, J.]

ssc/