

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 6910 OF 2013**

|                                                                      |     |             |
|----------------------------------------------------------------------|-----|-------------|
| The New India Assurance Co. Ltd.<br>through Mumbai Regional Office-I | ... | Petitioner  |
| Vs.                                                                  |     |             |
| Kum. Piyul Sandeep Madhavi<br>through Mother                         |     |             |
| Smt. Pranali Sandeep Madhavi & Anr.                                  | ... | Respondents |
| .....                                                                |     |             |
| Mr. D.S. Joshi for the petitioner.                                   |     |             |

**CORAM : M.S. SONAK, J.**  
**DATE : 23.02.2016.**

**P.C.:**

1. The learned counsel for the petitioner files the affidavit of service indicating that service has been completed on respondent no.2, who will be the only contested respondent, considering the order which is proposed to be made in the present petition.
2. This court, by its order dated 01/02/2016 has made it clear that this petition may be heard and disposed of finally, at the stage of admission, particularly in the light of the common judgment and order dated 21/11/2015 in First Appeal No. 1383 of 2013 and 15 connected matters, which, prima facie covered issues raised in the present petition. In the said order, the service upon respondent no.1, i.e., original claimant was dispensed with, since, it was made clear that there is no proposal to make any adverse order against respondent no.1.
3. Accordingly Rule. Rule is made returnable forthwith, in view of the order dated 01/02/2016.

4. On account of accident involving Tempo Trax Cruiser bearing no. MH-16-R-964, the respondent no.1, then aged about 5 years suffered injuries. In the same accident about 4 persons expired and almost 13 others sustained grievous injuries. The Claim Petitions filed by and on behalf of the 17 persons were disposed of by Motor Accident Claims Tribunal (MACT) by 17 separate awards. The petitioner-insurance company instituted 16 First Appeals, including First Appeal No. 1383 of 2013 to question the awards made by the MACT.

5. This court, by its common judgment and order dated 21/11/2015 disposed of First Appeal No. 1383 of 2013 and 15 connected matters. In paragraph 22 and 23 of the said common judgment and order, this court has held as follows:

*22. I place reliance on the case of **United India Insurance Co. Ltd. Vs. K.M. Poonam and Ors.** (Supra) where similar case of overloading for the liability under the policy was covered of 5 passengers in the jeep. However in this case the driver carried 15 passengers and fell in the ditch and similar issue arose before the Court. The Hon'ble Supreme Court held that the liability of the Insurance Company is limited to 6 awards at the highest. However, the Insurance Company was directed to pay all the awards' amount and directed Insurance Company to recover the amount in excess of its liability from the owner insurer in execution without filing a separate suit. The defence of the Insurance Company in the present appeals is also appreciated on the same lines and the liability of the present Insurance Company is fixed upto 10 awards only and Insurance Company is directed to pay the compensation in all the awards in all these First Appeals. However, Insurance Company can recover the excess amount of the awards which is lesser amount and other awards than the 10 awards in execution proceeding without filing a separate suit.*

*23. In respect of claims at Sr.No.11, 12, 13, 14, 15 and 16 the amount is to be recovered by the Insurance Company from the original owner of the insurer vehicle.*

6. The petitioner, could not institute an appeal against the award impugned in the present petition, because the compensation awarded to the respondent no.1, is less than Rs. 10,000/- and there is a statutory bar in the matter of institution of appeals, in such cases. The learned counsel for the petitioner however, submits that in case, the impugned award is not challenged by the insurance company, the same may have adverse consequences in so far as remaining matters are concerned. This is because, it is the case of the petitioner-insurance company that it was not liable to pay any compensation to the victims, since, the owner of the vehicle involved in the accident had breached certain terms of the insurance policy.

7. On perusing the common judgment and order dated 21/11/2015 in First Appeal No. 1383 of 2013 and connected matters it appears that the issues now raised by the petitioner in the present petition stands covered by the said common judgment and order. Therefore, it would be appropriate to dispose of the present petition by adopting the reasoning made in the common judgment and order dated 21/11/2015.

8. Accordingly, the impugned award dated 14/09/2012 is modified. It is directed that the petitioner-insurance company must first satisfy the impugned award by paying compensation to the respondent no.1, within a period of 4 weeks from today and thereafter, the petitioner-insurance company will be at liberty to recover the said

amount from the respondent no.2-owner of the vehicle, without necessity of instituting any separate suit against him. Save and except this modification, rest of the impugned award is maintained.

9. Rule is accordingly, made absolute to the aforesaid extent in this petition. There shall be no order as to costs.

10. All concerned to act on the basis of an authenticated copy of this order.

**(M.S. SONAK, J.)**