

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

FIRST APPEAL NO. 3991 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respd. No. 2)

VERSUS.

1. Sunita Jagannath Dharmadhikari,
Age : 53 years, Occu: Housewife,
2. Smt. Kusum Prabhakar Dharmadhikari,
Age : 83 years, Occu. Nil.
3. Ganesh Jagannath Dharmadhikari,
Age: 33 years, occu. Singer,

All R/o Ward No. 7 Shrirampur,
Taluka Shrirampur, District Ahmednagar.
4. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
5. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS
(Respd. No. 1 to 3 ori. Claimants
Respd. Nos. 4 & 5 Ori. Respd. Nos. 1 & 3)

...
WITH

FIRST APPEAL NO. 3984 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respd. No. 2)

VERSUS.

1. Nishad Ganesh Dharmadhikari,
Age : 6 years, Occu.: Education,
Being minor, under Guardianship of his father,
Ganesh Jagannath Dharmadhikari,
Age : 33 years, Occu.: Drum Pietter,
R/o. : Ward No.7, Shrirampur,
Taluka Shrirampur, District : Ahmednagar.
2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS

(Respdt. No.1 Org. Claimant, Respdt
Nos. 2 & 3 Or. Respdt. Nos. 1 & 3)

WITH

FIRST APPEAL NO. 3985 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respdt. No. 2)

VERSUS.

1. Madhuvanti Ganesh Dharmadhikari,
Age : 29 years, Occu.: Tailoring Work,
R/o.: Ward No.7, Shrirampur,
Taluka Shrirampur, District Ahmednagar.
2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS

(Respdt. No. 1 ori. Claimant
Respdt. Nos.2 & 3 Ori. Respdt. Nos. 1 & 3)

WITH
FIRST APPEAL NO. 3986 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respdt. No. 2)

VERSUS.

1. Prasad Nandkumar Kulkarni,
Age : 43 years, Occu.: Business,
R/o.: Ward No.7, Shrirampur,
Taluka Shrirampur, District Ahmednagar.

2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.

3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS
(Respdt. No. 1 ori. Claimant
Respdt. Nos.2 & 3 Ori. Respdt. Nos. 1 & 3)

WITH
FIRST APPEAL NO. 3987 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respdt. No. 2)

VERSUS.

1. Prakash Prabhakar Dharmadhikari,
Age : 59 years, Occu.: Service,
R/o.: Ward No.1, Shrirampur,
Taluka Shrirampur, District Ahmednagar.

2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS

(Respdt. No. 1 ori. Claimant
Respdt. Nos.2 & 3 Ori. Respdt. Nos. 1 & 3)

...
WITH

FIRST APPEAL NO. 3988 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respdt. No. 2)

VERSUS.

1. Ketki Prasad Kulkarni,
Age : 6 years, Occu.: Student,
Being Minor U/g of her father,
Prasad Nandkumar Kulkarni
Age : 43 years, Occu.: Business,
R/o.: Ward No.7, Shrirampur,
Taluka Shrirampur, District Ahmednagar.
2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS

(Respdt. No. 1 ori. Claimant
Respdt. Nos.2 & 3 Ori. Respdt. Nos. 1 & 3)

WITH
FIRST APPEAL NO. 3989 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respd. No. 2)

VERSUS.

1. Pranjali @ Dipti Prasad Kulkarni,
Age : 39 years, Occu.: Service,
R/o.: Ward No.7, Shrirampur,
Taluka Shrirampur, District Ahmednagar.
2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS
(Respd. No. 1 ori. Claimant
Respd. Nos.2 & 3 Ori. Respd. Nos. 1 & 3)

WITH
FIRST APPEAL NO. 3990 OF 2016

Bajaj Allianz General Insurance Co. Ltd.
The Legal Manager,
1st Floor, G.E. Plaza, Airport Road,
Yerwada, Pune – 411 006

Through its Branch Manager/Authorized Signatory,
2nd Floor LIC Building Rajendra Bhavan,
Adalat Road, Aurangabad

... APPELLANT
(Ori. Respd. No. 2)

VERSUS.

1. Ganesh Jagannath Dharmadhikari,
Age : 33 years, Occu.: Drum Pitter,
R/o.: Ward No.7, Shrirampur,
Taluka Shrirampur, District Ahmednagar.

2. Arun Dada Bansode,
Age: Major, occu. Owner,
R/o: Dattanagar, Shrirampur,
District Ahmednagar.
3. Afsar Imam Bagwan,
Age: Major, Occup. Driver,
R/o : Dattanagar, Taluka Shrirampur,
District Ahmednagar.

.....RESPONDENTS

(Respdt. No. 1 ori. Claimant
Respdt. Nos.2 & 3 Ori. Respdt. Nos. 1 & 3)

....
Mr. M.R. Deshmukh h/f Mr. S.G. Chapalgaonkar, Advocate for appellant
Mr. R.A. Tambe, Advocate for respondents -original claimants
Mr. S.H. Pathan, Advocate h/f Mr. Mazhar A. Jahagirdar, for
respondents owner and driver

...

CORAM : K.K. SONAWANE, J.

RESERVED ON : 29th NOVEMBER, 2017.

DELIVERED ON : 21st DECEMBER, 2017.

JUDGMENT :-

1. Heard. **Admit.** With consent of the learned counsel for parties, the matters are heard at the time of admission.
2. This bunch of first appeals came to be filed on behalf of Bajaj Allianz General Insurance Co. Ltd. assailing the findings expressed by the Motor Accident Claims Tribunal, Shrirampur District Ahmednagar (hereinafter referred to as "Tribunal"), in the proceedings of Motor Accident Claim Petitions initiated by the respective claimants seeking compensation under section 166 of the Motor Vehicles Act, 1988 (for short " Act of 1988"). The legal issues involved in all these appeals are pertains to statutory defence as envisaged under section 149(2)(a) of the Act of 1988 for breach of condition of Insurance Policy to repudiate the liability of indemnify the insured. Therefore, all these appeals are

dealt with by this common judgment sans adverting to individuals facts of each and every matter.

3. It is not in dispute that the appellant – Insurance Company was the insurer of vehicle – Trax – cruiser jeep bearing registration No. MH-17/AJ-1527 involved in the accident occurred on 14-06-2012. It has been contended that all the respective claimants, their relatives and friends etc., had been to Gao on excursion. Unfortunately, while return journey, the vehicle jeep met with an accident on Radhanagari – Kolhapur Highway within the vicinity of Khindivarvade village. It has been alleged that the driver of jeep was very rash and negligent while driving the vehicle. When he was negotiating the curve in the Ghat section, he lost the control on the wheels and vehicle turned turtle. It plunged into the 20” deep ditch aside the road. The information of the mishap was passed on to the Police of Radhanagri Police Station. Accordingly, Police arrived at the spot. They drawn the spot panchnama. The occupants of the jeep who sustained injuries were escorted to the hospital at Kolhapur. However, the illfated Passenger namely Jagannath Prabhakar Dharmadhikari breathed his last on the spot of incident itself. Police drawn the inquest panchnama on his dead body and referred it for post-mortem. The medical experts conducted the post-mortem and opined that the deceased Jagannath succumbed to the injuries caused to vital organs following vehicular accident. The respondents – claimants blamed the driver for rash and negligent driving resulting into alleged accident. Therefore, the claimants taking recourse of remedy under section 166 of the Act of 1988 preferred the respective claim petition for compensation.

4. The respondents i.e. owner and driver as well as insurer of the offending vehicle caused their appearance before the Tribunal and resisted the claim. The appellant Insurance Company filed the written statement (Exhibit-30) and raised the objection that the driver of the vehicle jeep was not holding the valid driving licence. The insured vehicle was registered as a private vehicle and policy was issued under Private Car Package. But, the vehicle was used for commercial purpose. The use of vehicle for commercial purpose was in contravention of terms and conditions of Insurance Policy. Moreover, the vehicle was carrying the passenger more than the permitted capacity. Therefore, the insurer was not liable to indemnify the insured.

5. The learned member of the Tribunal framed the requisite issues and proceeded to determine the matter in controversy on merit. The respondent claimants examined themselves on oath. They have also produced the voluminous documents on record comprising police record, driving licence of the jeep driver, R.T.O documents of offending vehicle, medical documents etc. The respondent – Insurance Company adduced the evidence of its office personnel Shri Anil Ravindra Yawalkar to traverse the claim propounded on behalf of claimants. The R.T.O. Personnel was also examined in the MACP No. 133 of 2013. The Tribunal has considered the entire facts and circumstances brought on record and pleased to allow the claim petitions partly, by imposing monetary liability, jointly and severally, on the respondents for payment of compensation amount to the respective claimants. Being dissatisfied with the impugned order of joint and several liability, the appellant insurance company preferred these bunch of appeals to

redress its grievance.

6. The learned counsel for the appellant-Insurance Company vehemently submitted that the Tribunal did not appreciate the facts and circumstances of the matter in its proper perspective and committed error in imposing the liability jointly and severally on the Insurance Company. The learned counsel contends that there was a breach of condition of Insurance Contract. He added that the Tribunal did not pay any heed to the circumstance that the driver of the offending vehicle was not holding valid driving licence at the time of accident. Moreover, the vehicle was registered as Private vehicle and Insurance Policy was issued under caption of "Private Car Package Policy". The vehicle was not permitted to utilize for commercial purpose and there was a limitation as to use of vehicle under policy. Learned counsel drawn attention towards the cross-examination of claimant -Sunita Jagannath Dharmadhikari, wherein she admitted that vehicle was not owned by any of the occupants of the jeep, but they hired the vehicle on rent @ Rs. 10/- per K.M. In view of these circumstances, there was a breach of condition of the policy. Hence, under section 149(2) of the Act of 1988 insurer is not liable to indemnify the insured. According to learned counsel, appellant-Insurance Company has adduced the evidence of its Senior Executive Personnel Shri Amit Ravindra Yawalkar before the Tribunal. He categorically stated that vehicle involved in the accident was insured under the Private Car Package Policy. There was limitation to the use of vehicle claimed under policy but the Tribunal did not appreciate all these circumstances in proper manner. The learned counsel further alleged that the vehicle

involved in the accident was carrying near about 14 passengers at the time of accident. The vehicle was permitted only to carry 9 passengers as per Insurance Policy, and therefore, there was violation of breach of condition. Hence, respondent - Insurance Company is entitled to avoid liability for payment of compensation jointly and severally with owner and driver of the offending vehicle. Eventually, learned counsel urged that appellant-Insurance Company be exonerate from the monetary liability.

7. The pivotal issue to be determined in all these appeals is in regard to statutory defence available to the appellant -Insurance Company as provided under section 149(2) of the Act of 1988. According to appellant - Insurance Company, it has an legal right to repudiate the liability of payment of compensation in respect of accident involving death as well bodily injuries to the claimants arising out of use of vehicle Jeep insured with the appellant.

8. It is true that appellant-Insurance Company since beginning gave much more emphasis on the factum of breach of condition of Insurance Contract in this case. It has been alleged that driver of the vehicle involved in the accident was not holding valid driving licence at the time of accident. Moreover, the vehicle was registered as private vehicle and it was insured under the Private Car Package Policy. There was limitation as to the use of vehicle, but the vehicle was used for hire and reward basis. There were allegations that vehicle was carrying more number of passengers than the permitted under the policy. In the result, there was breach of condition of the contract and consequently,

it is imperative to absolve the appellant -Insurance Company from the liability to identify the insured in these cases.

9. Admittedly, the defence which the appellant - Insurance Company is entitled to take in the cases of compensation arising out of the motor vehicle accident is provided under section 149(2) of the Act of 1988. Provisions of section 149(2) of the Act of 1988 is reproduced as below:

149: Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.:

(1) XXX XXX XXX XXX XXX XXX XXX

(2) *No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely:—*

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:—

(i) a condition excluding the use of the vehicle—

(a) for hire or reward, where the vehicle is on

the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) xxx xxx xxx xxx xxx xxx

10. Their Lordships of Hon'ble Apex Court in the case of ***National Insurance Company v/s Nicolletta Rohtagi*** reported in **2002 (7) SCC 456** received an opportunity to deal with provisions of section 149(2) of the Act of 1988 and it has been laid down that the Insurer is allowed to contest the claim for compensation under Motor Vehicles Act only on the ground which are available in terms of sub-section (2) of section 149 of the Act of 1988. Their Lordships in paragraph No. 13 observed as under :

"13. To answer the question, it is necessary

to find out on what grounds the insurer is entitled to defend/contest against a claim by an injured or dependents of the victims of a motor vehicle accident. Under Section 96(2) of the 1939 Act which corresponds to Section 149(2) of the 1988 Act, an insurance company has no right to be a party to an action by the injured person or dependents of the deceased against the insured. However, the said provisions gives the insurer the right to be made a party to the case and to defend it. It is, therefore, obvious that the said right is a creature of the statute and its content depends on the provisions of the statute. After the insurer has been made a party to a case or claim, the question arises, what are the defences available to it under the statute? The language employed in enacting sub-section (2) of Section 149 appears to be plain and there is no ambiguity in it. It shows that when an insurer is impleaded and has been given notice of the case, he is entitled to defend the action on grounds enumerated in the sub-section, namely, sub-section (2) of Section 149 of the 1988 Act, and no other ground is available to him. The insurer is not allowed to contest the claim of the injured or heirs of the deceased on other ground which is available to an insured or breach of any other conditions of the policy which do not find place in sub-section (2) of Section 149 of the 1988 Act. If an insurer is permitted to contest the claim on other grounds it would be adding more grounds of contest to the

insurer than what the statute has specifically provided for."

11. In view of aforesaid legal guidelines, it is crystal clear that appellant - Insurance Company has an *locus standi* to avail statutory defence subject to provisions of Section 149(2) of the Act of 1988 in the matter of motor accident claim to avoid liability to indemnify the insured. In case, the appellant - Insurance Company succeed to establish that the insured allowed the driver to drive the vehicle without possessing valid driving licence as well as he intentionally and willfully permitted the use of vehicle for hire and reward or carrying the passengers more than sanctioned capacity, then the appellant - Insurance Company has a legal right to repudiate the liability to pay the compensation for the loss caused due to vehicular accident. But, such breach of terms and conditions of the contract must be established with cogent and succinct evidence.

12. In case of ***National Insurance Company Ltd. Vs. Swaran Singh*** reported in ***2004(3) SC 297***, it has been held that the degree of proof to establish on the part of insurer would depend upon the fact and circumstances of each case and it should be proved by cogent, succinct and reliable evidence on record. It has also been observed that if there are sufficient material on record to draw adverse inference pertains to breach of Insurance Contract, the Tribunal may exonerate the insurer from the liability to indemnify the insured. In paragraph No 69 and 70 Their Lordships has observed as under :

"69. The proposition of law is no longer res integra that the person who alleges breach must

prove the same. The insurance company is, thus, required to establish the said breach by cogent evidence. In the event the insurance company fails to prove that there has been breach of conditions of policy on the part of the insured, the insurance company cannot be absolved of its liability. (See Sohan Lal Passi).

70. Apart from the above, we do not intend to lay down anything further i.e. degree of proof which would satisfy the aforementioned requirements inasmuch as the same would indisputably depend upon the facts and circumstances of each case. It will also depend upon the terms of contract of insurance. Each case may pose a different problem which must be resolved having regard to a large number of factors governing the case including conduct of parties as regards duty to inform, correct disclosure, suppression, fraud on the insurer etc. It will also depend upon the fact as to who is the owner of the vehicle and the circumstances in which the vehicle was being driven by a person having no valid and effective licence. No hard-and-fast rule can, therefor, be laid down. If in a given case there exists sufficient material to draw an adverse inference against either the insurer or the insured, the Tribunal may do so. The parties alleging breach must be held to have succeeded in establishing the breach of conditions of the contract of insurance, on the part of the insurer by discharging its burden of proof. The Tribunal, there cannot be any doubt. Must arrive at a finding on the basis of the materials available on records."

13. Keeping in mind the expositions of law, it is manifestly clear

that defence of the appellant-Insurance Company is confined only to the extent of grounds enumerated under section 149(2) of the Act of 1988. There should be Contract of Insurance as per terms and conditions embodied in the policy. In case of any breach of terms and conditions of the policy, it is incumbent for insurer to establish the breach of condition with reliable evidence. In the matter in hand, the appellant – Insurance Company cast allegation that the driver of offending vehicle was not holding valid licence at the time of alleged accident. But, the document (Exhibit-42) produced in MACP No. 130 of 2013 was the driving licence of respondent - driver of the offending vehicle. The licence was issued for driving the transport vehicle on 01-11-2011 and was valid uptill 31-10-2014. The alleged vehicular accident occurred on 14-06-2012. These circumstances demonstrate that driver of the offending vehicle did possess the valid driving licence at the time of alleged accident. Therefore, there is no force in the objection raised on behalf of Appellant -Insurance Company that there was no valid driving licence with the driver of offending vehicle.

14. The appellant-Insurance company vociferously raised another ground for breach of terms and conditions of the Insurance Contract that the vehicle was used for hire or reward in contravention of the terms of the policy. It has also propounded on behalf of appellant that one of the conditions of insurance policy covering the vehicle involved in the accident was pertains to limitation as to use of vehicle. The clause contemplates that policy covers use of the vehicle for any purpose other than Hire or reward, Carriage of goods, Organised racing, pace making, Speed Testing, Reliability to trials, and any

purpose in connection with Motor Trade. In the matter in hand, it has been alleged that claimants were travelling in the vehicle Trax by hiring it on the rent @ Rs.10/- per K.M. The claimants were not owner of the vehicle. It has brought on record in MACP No. 130 of 2013 that claimant-Sunita Dharmadhikari herself admitted in her cross examination that vehicle was taken on rent @ of Rs. 10/- per k.m. Keeping explicit reliance on the version of sole statement of claimant Sunita, the appellant - Insurance Company claimed statutory defence to exonerate it from monetary liability.

15. As referred supra, it is obligatory on the part of appellant-Insurer to establish the circumstances of breach of condition with cogent and succinct evidence. There should be some reliable circumstance on record to draw adverse inference against owner of the vehicle that he intentionally and purposely ventured to contravened the terms and conditions of contract. It cannot be overlooked that the motor vehicle Act, 1988, is a social welfare legislation and therefore, provisions of Law contained in the Act are required to be interpreted so as to award just and proper compensation to the claimants. In the case of breach of condition the onus of proof would be upon insurer. It is also necessary to prove that the breach was with the knowledge of owner of offending vehicle.

16. Unfortunately, in the instant matter; except solitary stray statement of claimant Sunita in MACP No. 130 of 2013, there are no any other circumstances on record to conclude that the owner of the offending vehicle intentionally with knowledge committed breach of

conditions of Insurance Policy. It is worth to mention that except the claimant Sunita, no any other claimants-occupants of the jeep conceded that the vehicle was hired for excursion on rent @ Rs. 10/- per k.m. In contrast, they categorically denied the fact that they hired the jeep on rent basis. They stated that owner allowed them to use the vehicle on petrol basis. The Tribunal has correctly appreciated circumstances on record and found reluctant to give much more weightage to the stray statement of claimant Sunita in this case. The Tribunal denied to accept statutory defence propounded on behalf of insurer.

17. It would reiterate that the appellant-Insurer did not adduce evidence on record to show that there was breach of terms and conditions of the policy. The Office Personnels of respondent Shri Amit Yawalkar deposed about conditions stipulated under Insurance Policy and produced it on record. According to him, offending vehicle was registered as Private Car and the same was insured under "Private Car Package Policy". The evidence of Office Personnel of the appellant-Insurance Company would not facilitate to draw adverse inference against insured that he committed breach of terms and conditions of the Insurance Contract. The vehicle being private car was not put in controversy in this case. The claimants also categorically denied about the use of vehicle on rent by them. Moreover, they denied that there were near-about 14 occupants travelling in the jeep. The appellant-Insurance Company made attempt to rely upon the police record, more particularly, the FIR produced on record which reflects that near about 14 passengers were travelling in the jeep at the relevant time of

accident.

18. The law postulates that the document of FIR was meant only for the purpose to set the criminal law in motion. The recitals of the police record would not be considered or appreciated without any substantive evidence of witnesses. The Police record made available in these cases cannot be read in favour of appellant to draw inference about breach of conditions of Insurance Policy. There were no efforts on behalf of insurer to adduce evidence of Police Personnel, who lodged the FIR on the basis of information collected by him at the spot of accident itself. Moreover, no endeavour to examine witnesses, who had an acquaintance with the relevant facts and circumstances in which the accident occurred at the relevant time. In absence of any credible and reliable evidence, it would be hazardous to blindly act upon the defence of the appellant- Insurance Company for the allegation of breach of conditions of Insurance Contract in this case. Undoubtedly, the appellant-Insurance Company has a legal right to invoke statutory defence under section 149(2) of the Act of 1988. But, simultaneously it is also obligatory on the part of appellant -Insurance Company to establish the circumstances of breach of condition of contract with reliable, dependable and credible evidence for adverse inference against owner of offending vehicle. In the instant case, it is hard to believe that there was breach of condition of Insurance Policy. The appellant Insurance Company failed to discharge its onus to repudiate the liability.

19. In the above premise, there is no impediment to arrive at the

conclusion that the appellant - Insurance Company did not succeed to bring on record, reliable circumstances for adverse inference of breach of condition of Insurance Contract. The legal guidelines delineated in aforesaid Swaran Singh's Case mandate that there must be some material available on record to draw adverse inference against insurer. The appellant did not discharge its burden to prove that the breach was within the knowledge of owner of vehicle. Except the solitary stray statement made by claimant Sunita in her cross-examination, there are no any other circumstances available on record to prop-up the edifice of statutory defence propounded on behalf of appellant - Insurance Company. In such circumstances, there is no propriety to nod in favour of appellant. The interference in the findings expressed by the Tribunal is totally unwarranted and indefensible. The appeals being devoid of merit deserve to be dismissed. There would not be any interference in the findings of the Tribunal at the behest of the appellant -Insurance Company in these cases.

20. In view of aforesaid discussion, all the appeals stand dismissed. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.
