

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

FIRST APPEAL NO. 3303 OF 2015

RELIANCE GENERAL INSURANCE COMPANY THR ITS
MANAGER

VERSUS

KAWALABAI RAMA RATHOD AND ANOTHER

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Advocate for Appellant : Mr S.S.Patil

Advocate for Respondent 1 : Mr U.B. Bilolikar

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CORAM : V.K. JADHAV, J.

Dated: January 25, 2017

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PER COURT :-

1. Being aggrieved by the judgment and award dated 9.2.2015 passed by the Member, Motor accident Claims Tribunal, Biloli in MACP No.34/2010 the original respondent insurer preferred this appeal to the extent that though the learned Member of the Tribunal has observed in paragraph no.16 of the judgment that, appellant insurance company is at liberty to recover the amount from the respondent no.1-owner, failed to direct the same in the operative part of the judgment/order.

2. The learned counsel for the appellant-insurer submits that, in paragraph no.16 of the Judgment, the Tribunal has referred the judgments of the High Court

and directed the appellant insurer to satisfy the award and then recover the amount from the respondent owner. However, in the operative part of the order, in clause no.2, the Tribunal has directed the respondents to pay the compensation as worked out jointly and severally. Learned counsel submits that, in view of the said clause, it would be difficult for the appellant-insurer to recover the amount from the respondent owner.

3. I have heard the learned counsel for respondent claimant.

4. It appears from the reading of paragraph nos. 15 and 16 of the judgment that the learned Member of the Tribunal has placed his reliance on a case of United India Insurance Company Limited Vs. Sindhutai Darwante, reported in 2010(3) Mh.L.J.886 and in case of Kusum Lata and another Vs. Satbir and others reported in 2011 ACJ 926 and observed that, the appellant insurer is at liberty to recover the amount from the respondent owner and accordingly, the appellant insurer

is required to make a payment of compensation. However, it appears from the operative part of the order that, the Tribunal held respondents jointly and severally liable to pay the compensation.

5. In view of the above submissions, by modifying the impugned operative part of the operative order passed by the learned Member of the Tribunal, Biloli this appeal can be disposed of. Hence, order.

O R D E R

1. First appeal is hereby partly allowed.
2. The judgment and award passed by the Member, Motor Accident Claims Tribunal, Biloli dated 9.2.2015 in MACP No.34/2010 to the extent of clause no.2 of the operative part of the order is modified in the following manner :-
 - a] The respondent no.1 is held liable to pay Rs.57,810/-(Rs. Fifty Seven Thousand eight hundred and ten only) to the petitioners inclusive of 'No Fault Liability'.

- b] The Respondent No.2 Insurer shall pay the said amount of Rs.57,810/- (Rs. Fifty Seven Thousand Eight Hundred and Ten only) to the claimants and recover it from respondent no.1-owner.
 - c] It is hereby made clear that to recover that amount from respondent no.1 owner, the respondent no.2 insurer need need take recourse to independent proceedings.
- 3. Rest of the Judgment and Award stands confirmed.
 - 4. Award be drawn up as per the modifications as above.
 - 5. First Appeal accordingly disposed of.
 - 6. The respondents claimant are permitted to withdraw the amount deposited by the appellant insurer before this Court.

(V.K. JADHAV, J.)

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aaa/-