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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.4315 OF 2016  
WITH  
CIVIL APPLICATION NO.1858 OF 2014  
IN  
FIRST APPEAL (ST) NO. 30798 OF 2013  
WITH  
FIRST APPEAL (ST) NO. 30798 OF 2013**

Universal Sampo Gen. Ins. Co. Ltd. ...Applicant/Appellant  
vs  
Mithubai Shantilal Jain @ Rathod & Ors. ...Respondents

.....  
Ms S. Chatarjee i/b S.R.Singh & Co. for the applicant/appellant.  
Mr A.M.Gokhale for Respondent Nos.1 to 4.  
.....

**CORAM : M. S. SONAK, J.  
13 FEBRUARY, 2017**

**P.C. :**

The only point raised in this appeal, by the Insurance Company, is that the driver of the motorcycle bearing No. MH-04/EM-8450 which was insured with the Appellant, had no license, and therefore, this constitutes breach of the terms of the insurance policy.

2 Admittedly, in this case, Respondent Nos.1 to 5 (claimants) claim on account of demise of Shantilal Jain, who was a third party that is pedestrian, who was knocked down by the said motorcycle.

3           In such situation, even if the contention of the appellant Insurance Company is to be upheld, the normal order in terms of the law laid down in **National Insurance Co. Ltd. Vs Swaran Singh**<sup>1</sup> would be that the Insurance Company first satisfies the award and thereafter recovers the amount from the owner of the motor vehicle involved in the accident.

4           Accordingly, there is no necessity to admit this appeal as against Respondent Nos.1 to 5. Respondent No.6 who is also claimant has already expired. Therefore, the appeal is admitted as against Respondent No.7 – owner of the motor vehicle.

5           There is no case made out for grant of any stay on the execution of the impugned award. The Insurance Company will have to pay Respondent Nos.1 to 5's claim in pursuance of the impugned award. However, if this appeal succeeds, the Insurance Company, can always be granted liberty to recover such amount from Respondent No.7.

6           Accordingly, this appeal is admitted only as against Respondent No.7 and is dismissed as against remaining Respondents.

7           The Civil Application for stay is disposed of in the aforesaid terms. The appellant to file private paper book within a period of six months from today, failing which the appeal shall stand

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1       2004 A.C.J. 1

dismissed for want of prosecution without any further reference to the Court. The appellant to take fresh steps for service of notice upon Respondent No.7.

8 Civil Application No. 4315 of 2016 stands disposed of in the aforesaid terms. The claimants shall be entitled to withdraw the amount in terms with the directions in the impugned award along with accrued interest.

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