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

FIRST APPEAL NO.121 OF 2012

Divisional Manager,
United India Insurance
Co.Ltd., Opp. Saraf
Chambers, Sadar Nagpur
Through the Regiional
Manager, Nagpur Regional
Offce, Shankar Nagar,
Nagpur ..APPELLANT

VERSUS

1. Smt.Tiranbai wd/o
Jaichand Raut,
aged about 30 years,
(as on the date of
Petition), Occupation
Household

2. Laxmichand s/o Jaichand
Raut, aged about 12 years
(as on the date of petition)
presently aged 28 years,
Occu. Student

3. Ku.Sunita d/o Jaichand Raut,
Aged about 12 years
(as on the date of petition)
presently aged 26 years

4. Shivchand s/o Jaichand Raut,
aged about 8 years
(as on the date of petition)
presently aged 24 years,
R/o Raul Chowk, Ambedkar
Nagar, Wadi, District Nagpur
The respondents no.2 to 4
are now Major and as such
are not represented through
respondent no.1

5. Hemant s/o Sheshrao
Deshpande, Age Major,
Occu. Vehicle owner,
R/o. 21/1, V.H.V.colony,
Trimurti nagar, Nagpur ..RESPONDENTS

Mr D.N. Kukday, Advocate for appellant;
Mr P.S. Mirache, Advocate for respondents No.1 to 4
Mr Asghar Hussain, Advocate for respondent No.5

CORAM : N.W. SAMBRE, J.

DATE : 12th APRIL, 2017

ORAL ORDER :

1. This appeal is under Section 173 of the Motor Vehicles Act by the appellant – insurance company.

2. Respondents-claimants sought compensation of Rs.3,00,000/- under Section 166 of the Motor Vehicles Act.

3. On 15th September 1995 deceased was travelling in tempo trax from Raymond Company, Borgaon (M.P.) along with other co-passengers, which was insured with the appellant, met with an accident resulting into his death. The claimant No.1 is widow whereas claimants No.2 to 4 are his children. The deceased

was Mathadi labour and was aged about 35 years at the time of his death.

4. The insurance company – original respondent No.2 resisted claim at Exh.30 written statement by denying the age and occupation of the deceased. It is further claimed that offending vehicle was insured with respondent No.2 for a period from 28th July 1995 to 27th July 1996, which was "Act only Policy". It is claimed that the vehicle insured was private vehicle and use thereof for hire or reward was prohibited. According to appellant-insurance company, since vehicle was used for hire, there is breach of policy conditions and as such, claim was required to be rejected against insurance company.

5. The same contention is canvassed even in the present appeal by Mr Kukday, learned Counsel for the appellant.

6. With the assistance, I have perused the entire record. After the issues were framed at Exh.36,

issue No.3 pertains to burden to prove the liability in respect of occupant of the offending vehicle not covered by the policy.

7. It is then to be noted from the material available on record that insurance company has accepted premium of Rs.450/- for nine occupants. As such, it has to be inferred therefrom that insurance policy is issued for maximum nine occupants. It is further required to be noted that same was formed to be basis for award of compensation to be first paid by the insurance company and then to be recovered from the owner.

8. The insurance company is required to recover the said amount of compensation from the owner in execution of the judgment under challenge.

9. In view of above, in such eventuality, in my opinion, the claim raised by the insurance company is futile one as interest of insurance company is well secured.

10. Though the plea sought to be raised “pay and recover” order cannot be passed, it is to be noted that this Court has already taken a view that in the given facts and circumstances, such order can be passed particularly when the interest of insurance company is required to be secured, in the matter of **United India Insurance Co.Ltd., Vs. Sindhubai w/o Kondiram Darwante,** reported in **2010 (3) Mh.L.J.886.**

11. As there is no substance in appeal, same fails, stands dismissed.

(N.W. SAMBRE, J.)

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