

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

FIRST APPAL NO. 1431 OF 2011
WITH
CIVIL APPLICATION NO. 8197 OF 2011
IN
FIRST APPEAL NO. 9046 OF 2011

Bajaj Allianz General Insurance Co. Ltd.
GE Plaza, Airport Road, Yerwada, Pune
Through its Branch Manager,
2nd Floor, Rajendra Bhavan,
Adalat Road, Aurangabad – 431 001

APPELLANT
(Original Respondent No. 4)

VERSUS

- 1) Balaji s/o Raghunath Khedkar,
Age; 44 years, Occupation; Mistri,
Resident of Shaikh Rajur,
Taluka; Palam, District Parbhani.
- 2) Premier Logistics,
301, Parijat Apartment,
Near Sai Mandir,
Vikasnagar, Wardha Road,
Nagpur – 440815.
- 3) Sk. Yusufbee Syed Gafoor,
Age; 42 years,
Occupation; Household,
Resident of Shaikh Rajur,
Taluka; Palam, District; Parbhani.
- 4) New India Assurance Co. Ltd.,
Nagpur Branch,
Through it's Divisional Manager,
Nanded Branch,
Lahoti Complex, Vazirabad,

Nanded.

RESPONDENTS

(Respondent No. 1 – Original
Claimant and Respondent
Nos. 2 to 4 – Original
Respondent Nos. 1 to 3)

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Shri. S.G. Chapalgaonkar, Advocate for the Appellant
Shri. Y.R. Barahate, Advocate for Respondent No. 1
Shri P.S. Agrawal, Advocate for Respondent No. 2
Shri M.M. Ambhore, Advocate for Respondent No. 4.

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CORAM : SUNIL K. KOTWAL, J.

Date of Judgment : 9.10.2018

J U D G M E N T :

This appeal is directed against the judgment and award passed by the Motor Accident Claims Tribunal, Nanded (Hereinafter referred to as the 'MACT') in MACP No. 316/2009 awarding interim compensation of Rs. 25,000/- to the claimant under Section 140 of the Motor Vehicles Act, 1988 (Hereinafter referred to as the 'MV Act') and fastening joint and several liability against respondent nos. 1 to 4. The appellant is the original respondent No. 4 Bajaj Allianz General Insurance Company which insured motor cycle bearing No. MH-22-K-9075 involved in the accident. Respondent No. 1 is the original claimant and respondent nos. 2 to 4 are the original respondent nos. 1 and 3. Respondent No. 1 is the owner of Trailer No. CG-07-C-2184 involved in the accident, which was insured with

original respondent No. 3 Insurance Company.

2. Heard Shri S.G. Chapalgaonkar, learned counsel for appellant. Shri Y.R. Barhate, learned counsel for respondent No. 1, Shri P.S. Agrawal for respondent No. 2 and Shri M.M.Ambhore, learned counsel for respondent No. 4.

3. Learned counsel for appellant submits that the main petition i.e. MACP No. 316 of 2009 filed under Section 166 of the MV Act is disposed of on 15.4.2007 and appellant i.e. original respondent no. 4 Insurance Company is exonerated by the Tribunal. The liability is fixed only on the original respondent Nos. 1 and 3 to pay the entire compensation to the claimant. He has filed copy of judgment and award passed in MACP 316 of 2009. Learned counsels for respondents do not dispute the disposal of the original claim petition and exoneration of the appellant Insurance Company from its liability to pay compensation. Therefore, the liability fastened against the appellant/original respondent No. 5 to pay compensation to the claimant under Section 140 of the MV Act is obviously illegal. Therefore, the judgment and award passed against the appellant by MACT, Nanded in MACP No. 316 of 2009 dated 6.1.2011 deserves to be modified to exonerated the original respondent No. 4 from its liability. It follows that this appeal deserves to be allowed in the above said terms. Appeal is allowed. Appellant/ respondent No. 4 is

exonerated from its liability to pay compensation under Section 140 of the MV Act to the claimant in MACP No. 316 of 2009. The interim award be modified accordingly. Appeal is disposed of in the above said terms. Parties to bear their respective costs. Civil Application is disposed of. If any, compensation is deposited by the appellant in this Court, the same be refunded to the appellant Insurance Company.

(SUNIL K. KOTWAL)
JUDGE

mahajansb/