

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

910 FIRST APPEAL NO. 962 OF 2013
WITH CA/4471/2013 IN FA/962/2013

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
VERSUS
SARASWATI SHRIHARI THAKARE AND OTHERS

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Advocate for Appellant : Mr. Chapalgaonkar S.G.

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CORAM : SUNIL K. KOTWAL, J.

DATE : SEPTEMBER 19, 2018

O R D E R :

This appeal is directed by the insurance company against the order, passed by the Motor Accident Claims Tribunal, Nanded, in Motor Accident Claim Petition No. 810 of 2009, under Section 140 of the Motor Vehicles Act, 1988.

2. Learned counsel for the insurance company submits that at the time of accident the deceased was traveling by tractor which was insured with the appellant. However, except driver nobody can travel by the tractor. Therefore, the insurance company is not

liable to indemnify the owner for the compensation under Section 140 of the Motor Vehicles Act, 1988. It is needless to say that except driver nobody can sit on the tractor, as passenger. Therefore, there is clear breach of policy of the insurance issued by the appellant in favour of the tractor owner. In the circumstances, the insurance company deserves to be exonerated. Already main petition under Section 166 of the Motor Vehicles Act, 1988 is dismissed in default on 5.4.2016.

3. I hold that this appeal deserves to be allowed and it is accordingly allowed. Appellant insurance company is exonerated from the liability to pay compensation under Section 140 of the Motor Vehicles Act, 1988 awarded under the impugned order, dated 14.2.2013. The claimants will be at liberty to recover the same from the tractor owner – respondent no. 8. Entire compensation amount deposited by the insurance company be refunded to the insurance

company along with accrued interest. No order as to costs.

[SUNIL K. KOTWAL, J.]

dbm