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

FIRST APPEAL NO. 694 OF 2015

Bajaj Allianz General Insurance Co. Ltd.
GE Plaza, Airport Road,
Yerwada, Pune

Through its Authorized Signatory/
Branch Manager,
2nd Floor, Rajendra Bhavan,
Adalat Road, Aurangabad-431 001 .. **APPELLANT**
[Orig. Respondent]

VERSUS

1. Vatchalabai w/o. Marotrao Bhusare,
Age: 42 years, Occu : Household.

2. Ganesh s/o. Marotrao Bhusare,
Age: 19 years, Occu. Education.

3. Keshav s/o. Marotrao Bhusare,
Age: 17 years, Occu. Education.

4. Madhav s/o. Marotrao Bhusare,
Age: 15 years, Occu. Education

No.3 & 4 since Minors U/G of his
mother Vatchalabai w/o. Marotrao Bhusare

All R/o. Navki, Taluka Purna,
District Parbhani. .. **RESPONDENTS**
[Respdt.No.1 to 4 – Org.Claimants]

…

Mr.S.G.Chapalgaonkar, Advocate for the appellant.

…

CORAM : V.L.ACHLIYA,J.
DATE : 11.01.2021

ORAL JUDGMENT :

1] Being aggrieved by the order dated 23.12.2014 passed by the Motor Accident Claims Tribunal, Parbhani in MACP No.368 of 2012 thereby allowing the application filed under Section 140 of the Motor Vehicles Act, the appellant – Insurance Company has preferred this Appeal.

2] Heard learned counsel for the appellant–Insurance Company. The respondents-claimants though served with the notice of final disposal are absent.

3] Mr.Chapalgaonkar, learned counsel for the appellant - Insurance Company submits that during pendency of the Appeal, Claim Petition i.e. MACP No. 368 of 2012 filed under Section 166 of the Motor Vehicles Act has been decided on merits vide judgment and order dated 04.10.2018 by holding that the claimants are not entitled to receive the compensation on account of accidental death of the deceased Maroti Bhusare, the owner of the vehicle insured with the appellant – Insurance Company. It is submitted that the claimants have filed the claim petition seeking compensation on account of death of deceased Maroti Bhusare, who died in the motor accident on 14.03.2012. At the time of accident, deceased was driving the Ape-Richshaw owned by him. He lost the control over the vehicle which resulted into causing fatal injuries to the deceased. The offence was registered against the deceased for driving vehicle in rash and negligent manner. The appellant – Insurance Company has taken a plea that since deceased was himself owner and driver of the vehicle, the legal heirs of the deceased are not entitled to receive the compensation including compensation u/s. 140 of the Motor Vehicles Act. Without looking to the defence of the appellant – Insurance Company, the Tribunal has passed the impugned order. While deciding the main petition, the Tribunal has accepted defence of the appellant – Insurance Company and held that the claimants are not entitled to seek compensation on account of own fault on the part of the deceased in driving the vehicle. It is further held that there was no contractual liability to pay the compensation on account of death of the insured–owner of the vehicle. It is submitted that in view of decision of the Tribunal, the impugned order deserves to be set aside.

4] On due consideration of the submissions advanced in the light of the judgment and order dated 04.10.2018 passed in MACP No.368 of 2012, I am of the view that appeal deserves to be allowed. In para no.26 of the said judgment, the Tribunal has observed as under :

> *26- The petitioners have filed petition under section 166 of the Motor Vehicles Act contending that Maroti was not driving vehicle as owner but was driving as driver. It is pertinent to note that when party comes under section 166 of the Motor Vehicles Act to claim compensation, it must be a 'third party' and it must show that it sustained damage to the property or injury or death of some kin due to rash and negligent driving of the vehicle. The Act Policy i.e. Policy issued under Section 147 of M.V. Act mainly covers risk of 'third party'. The owner of the vehicle is not a 'third party' and cannot be covered under 'Act Policy'. The insurance policy is a contract between insurer and the insured. Therefore, it is governed by the terms of contract. Now, I need not point out any particular authority but law is clear that unless the owner driver is covered by special contract of reimbursement in case of loss, injury or death during course of use of the vehicle, he cannot claim compensation under section 166 of the Motor Vehicles Act. An owner can be covered only under the circumstance*

if he pays additional premium to cover his own risk. Similarly, damage to the vehicle (O.D.) is also covered only if additional premium is paid.

5] In the result, appeal deserves to be allowed. Accordingly, the impugned order dated 23.12.2014 passed in MACP No.368 of 2012 below Exh.5 is set aside.

6] The amount, if any, deposited by appellant towards statutory deposit then same be refunded to the appellant–Insurance Company.

7] Appeal is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC