IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2902 OF 2019
WITH
CIVIL APPLICATION NO. 10760 OF 2019 AND
CIVIL APPLICATION NO. 14835 OF 2019

New India Assurance Co. Ltd.
Through its Branch Manager,
Opp. District Court, Adalat Road,
Aurangabad ... **Appellant**
(Orig.Res.no.2)

Versus

1. Sheetal w/o Brijgopal Modani
Age: 36 years, Occupation: Tuitions,
R/o. MIDC Waluj, Pandharpur,
Tq. Dist. Aurangabad **Orig. Claimant**

2. Joseph (George V. D.)
Died through L.Rs.

2A. Biji Joseph
Age: 45 years, Occ: household,

2B. Jitin joseph
Age: 23 years, Occ: Nil

2C. Jeena Joseph
Age: 23 years, Occ: Nil

2D. Jismy Joseph
Age: 21 years occ: Nil
All R/o. Vallappalliyill House,
Chithirapuram Etticitty,
Kunjithanny, Udukki. Kerala-685565 ... **Respondents**
(Res.no.1 orig.claimant
& Res.no.2 Orig.res no.1)

AND
FIRST APPEAL NO. 2903 OF 2019
WITH
CIVIL APPLICATION NO. 10762 OF 2019
AND
CIVIL APPLICATION NO. 14836 OF 2019

New India Assurance Co. Ltd.
Through its Branch Manager,
Opp. District Court, Adalat Road,
Aurangabad ... **Appellant**
(Orig.Res.no.2)

Versus

1. Brijgopal s/o Bhagwandas Modani
Age: 39 years, Occupation: Business,
R/o. MIDC Waluj, Pandharpur,
Tq. Dist. Aurangabad **Orig. Claimant**

2. Joseph (George V. D.)
Died through L.Rs.

2A. Biji Joseph
Age: 45 years, Occ: household,

2B. Jitin joseph
Age: 23 years, Occ: Nil

2C. Jeena Joseph
Age: 23 years, Occ: Nil

2D. Jismy Joseph
Age: 21 years occ: Nil
All R/o. Vallappalliyill House,
Chithirapuram Etticitty,
Kunjithanny, Udukki. Kerala-685565 ... **Respondents**
(Res.no.1 orig.claimant
& Res.no.2 Orig.res no.1)

AND
FIRST APPEAL NO. 2904 OF 2019
WITH
CIVIL APPLICATION NO. 10763 OF 2019
AND
CIVIL APPLICATION NO. 14834 OF 2019

New India Assurance Co. Ltd.
Through its Branch Manager,
Opp. District Court, Adalat Road,
Aurangabad ... **Appellant**
(Orig.Res.no.2)

Versus

1. Mohit s/o Nandkishore Zawar
Age: 25 years, Occupation: Service,
R/o. Radhamohan Colony, Khokadpura,
Tq. Dist. Aurangabad **Orig. Claimant**

2. Joseph (George V. D.)
Died through L.Rs.

2A. Biji Joseph
Age: 45 years, Occ: household,

2B. Jitin joseph
Age: 23 years, Occ: Nil

2C. Jeena Joseph
Age: 23 years, Occ: Nil

2D. Jismy Joseph
Age: 21 years occ: Nil
All R/o. Vallappalliyill House,
Chithirapuram Etticitty,
Kunjithanny, Udukki. Kerala-685565 ... **Respondents**
(Res.no.1 orig.claimant
& Res.no.2 Orig.res no.1)

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Mr. Aniruddha S. Usmanpurkar, Advocate for appellant
Ms A. S. Mantri, Advocate for respondent No.1

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CORAM : R. G. AVACHAT, J.
DATED : 23rd NOVEMBER, 2021

<u>J U D G M E N T</u> :-

. These three first appeals are being decided by this common judgment, since they arise from judgments and awards passed by the Motor Accident Claims Tribunal, granting compensation on account of injuries and permanent disability suffered in one and the same accident. The appeals have been preferred by the Insurance Company on the ground of want of liability to pay compensation.

2. Heard.

The original petitioners - respondent No.1 in all these appeals had visited Kerala for site-seeing. The private Jeep bearing registration No.KL-59-507 was hired for the purpose. The Jeep met with the accident on 25.10.2017 by 12.30 p.m. No other vehicle was involved in the accident. The original claimants suffered multiple injuries and permanent disability as well as a result of the accident. They, therefore, preferred separate Claim Petitions (M.A.C.P. Nos.591/2018, 333/2018 and 334/2018, respectively) for compensation. The learned Member, Motor Accident Claims

Tribunal, Aurangabad, allowed the petitions granting compensation of Rs.75,000/-, Rs.75,000/- and Rs.50,000/-, respectively.

3. Shri A. S. Usmanpurkar, learned Advocate for the appellant – Insurance Company would submit that it was a private vehicle. It was hired for touring purpose. The insurance cover granted for the said vehicle was in the nature of private car 'act only policy'. As such, risk of passengers travelling therein had not been covered. The appellant – Insurance Company has, therefore, no liability to pay any compensation. The learned Advocate, therefore, urged for allowing the appeals.

4. Smt A. S. Mantri, learned Advocate for the respondents – claimants would, on the other hand, submit that the accident took place due to negligence on the part of the Jeep driver. The appellant – Insurance Company has granted insurance cover to the Jeep involved in the accident. The claimants where none other than third parties. According to her, the Tribunal has rightly granted compensation. She, therefore, urged for dismissal of the appeals. The judgment of the High Court of Rajasthan (at Jaipur), in the case of ***Indira Devi vs Naresh (Civil Misc. Appeal No.1942 of 2008)***, was relied on.

5. Considered the submissions advanced by the learned Advocates. Perused the claim petitions and written statements, as well. Gone through the evidence. Admittedly, the claimants had been to Kerala for site-seeing. The Jeep No.KL-59-507 was therefore hired by them. It was a private Jeep letting on hire, is prohibited by law and even under the terms of the contract of insurance. Moreover, the insurance cover granted to the said jeep was in the nature of private car 'act only policy'. As such, risk of persons travelling therein was not covered.

6. The issue is no longer res-integra. In the case of ***General Manager, Uniter Insurance Company Limited vs. M. Laxmi and ors – (2009) 17 SCC 301,*** the Hon'ble Supreme Court observed thus:-

> "*Motor Vehicles Act, 1988 – Ss. 147 and 166 – Third-party risk-Death of pillion rider-Liability of insurer to pay compensation-Deceased being a pillion rider and also gratuitous passenger hence, not a third party, reiterated, cannot claim compensation from Insurance Company.*"

In the case of ***United India Insurance Co. Ltd., Shimla Vs. Tilak Singh and ors – (2006) 4 SCC 404,*** the Hon'ble Supreme Court observed thus:-

"*Motor Vehicles Act, 1988-S.147 – Third party risk-Liability of insurer to pay compensation under S.147-Extent of-Risk of death or injury to gratuitous passenger carried in a private vehicle, if covered-Held, an insurance policy under S.147 does not cover such a risk.*"

7. In view of the above, the reliance on the judgment of Rajasthan High Court in the case of ***Indira Devi*** (supra), would be of no avail to the respondents – claimants. The Tribunal has erred in granting compensation. Even no pay and recover order could be passed, since it is not a case of risk having been covered, but for breach of terms and conditions of the policy of insurance.

8. In the result, the appeals succeed. Hence, following order:-

O R D E R

(i) First Appeal Nos.2902 of 2019, 2903 of 2019 and 2904 of 2019, are allowed.

(ii) The impugned awards dated 20.04.2019, passed by the Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. Nos.591/2018, 333/2018 and 334/2018, as against the appellant – Insurance Company, are set aside. The Claim Petitions stand dismissed against the appellant – Insurance Company.

(iii) The amount in deposit, be paid back to the appellant – Insurance Company, along with interest accrued thereon, immediately.

(iv) All the pending civil applications stand disposed of.

[R. G. AVACHAT, J.]

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