

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

FIRST APPEAL NO.895/2008

WITH

FIRST APPEAL NO.1084/2008

WITH

FIRST APPEAL NO.1320/2008

FIRST APPEAL NO.895/2008

The New India Assurance Company Limited,
 through its Branch Manager, West High
 Court Road, Dharampeth, Nagpur
 (Original Respondent No.2.)

... APPELLANT

----VERSUS----

1. Kusum w/o. Baburao Thetmare,
 Aged about 43 years, Occ. - Labour,
 Resident of Chikhali (Malode), Tahsil Katol,
 District Nagpur.

2. Raju s/o. Ishwarsingh Chauhan,
 (Appeal abated since deceased).

... RESPONDENTS

WITH

FIRST APPEAL NO.1084/2008

The New India Assurance Company Limited,
 through its Branch Manager, West High
 Court Road, Dharampeth, Nagpur
 (Original Respondent No.2.)

... APPELLANT

----VERSUS----

1. Gangubai w/o. Chindhuji Wat,
 Aged about 63 years, Occ. – Labour,
 Resident of Masala, Tahsil Katol,
 District Nagpur.

2. Raju s/o. Ishwarsingh Chauhan,
 (abated since deceased).

... RESPONDENTS

WITH**FIRST APPEAL NO.1320/2008**

The New India Assurance Company Limited,
through its Branch Manager, West High
Court Road, Dharampeth, Nagpur
(Original Respondent No.2.)

... APPELLANT

----VERSUS----

1. Kishor s/o. Baburao Thetmare,
Aged about 24 years, Occ. – Nil,
Resident of Chikhali (Malode),
Tahsil Katol, District Nagpur.

2. Raju s/o. Ishwarsingh Chauhan,
(abated since deceased).

... RESPONDENTS

Mr. A. H. Patil, Advocate for the Appellant in all Appeals.

Mr. B. S. Mandhare, Advocate h/f. Mr. P. S. Mirache, Advocate for the
Respondent in all Appeals.

CORAM : M. S. SONAK, J.

DATE : 06.12.2021.

ORAL JUDGMENT :

1. Heard Mr. A. H. Patil, learned Counsel for the appellant in all these appeals, and Mr. B. S. Mandhare, learned Counsel holding for Mr. P. S. Mirache, learned Counsel for the claimants in all these appeals.

2. The learned Counsel for the parties agrees that all these appeals can be disposed of by the common judgment and order. In fact, all these appeals have been tagged together, since, they arise out of a challenge to the common judgment and award dated

07.09.2007 in three claim petitions instituted before the Motor Accident Claim Tribunal (Tribunal).

3. In these cases, the claims arose on account of an accident that took place on 26.05.1995, when the claimants were traveling by matador bearing registration No.MH-31/G-5155 as passengers. The claimants had pleaded that the driver of this vehicle drove the vehicle in a rash and negligent manner on the wrong side and lost control. As a result, the vehicle turned turtle and the appellant suffered serious injuries. By the impugned award, each of the claimants has been granted compensation of Rs.35,000/- for the injuries sustained by them.

4. At this stage, it is necessary to note that some other claimants had also instituted claim petitions on account of injuries suffered in the very same accident that took place on 26.05.1995. As against the award made in their favor, the Insurance Company has instituted two separate appeals including First Appeal No.1288/2008.

5. In First Appeal No.1288/2008 instituted against Yuvraj Rewde and others, this Court by judgment and order dated 24.10.2008 considered and rejected the contentions raised on behalf of the Insurance Company that the vehicle in question was a private vehicle, but was used for carrying passengers in breach

of the terms of the policy and therefore, Insurance Company was not liable for payment of any compensation. In yet another appeal instituted by the Insurance Company, this Court, following the judgment and order in Appeal No.1288/2008, dismissed the appeal at the stage of admission.

6. Mr. A. H. Patil, learned Counsel for the appellant himself pointed out the above facts in all fairness. He, however, submitted that there was no discussion in the judgment and order dated 24.10.2008 on why carrying of the passengers in a private vehicle, did not amount to a fundamental breach of the terms and conditions of the insurance policy. He submitted therefore that this question is required to be gone into in the present appeals.

7. According to me, there is no scope for going into the question of breach of terms and conditions of the Insurance Policy in these appeals because the very same question was raised and decided against the Insurance Company in judgment and order dated 24.10.2008 in First Appeal No.1288/2008. As noted earlier, this issue was raised in the precise context of the accident that took place on 26.05.1995 and the very same matador vehicle in which the present respondents were also traveling. Learned Single Judge of this Court considered the submissions on behalf of the Insurance Company and thereafter, followed the decision of

the Hon'ble Supreme Court in *M/s. National insurance Co. Ltd. Vs. Baljit Kaur and Ors.* reported in *2004 (5) All M.R. (SC) 238.*

8. On the perusal of the judgment and order dated 24.10.2008, it cannot be said that there was no discussion on the point now raised on behalf of the appellant and Insurance Company. Mr. B. S. Mandhare, learned Counsel for the respondent also pointed out that the owner of the matador had paid an extra premium to cover such eventualities and the insurance company could not avoid liability. Therefore, following the judgment and order dated 24.10.2008 in First Appeal No.1288/2008, even these appeals will have to be dismissed.

9. Mr. A. H. Patil, learned Counsel for the appellant, however, pointed out that even in the judgment and order dated 24.10.2008 in First Appeal No.1288/2008, liberty was granted to the appellant –Insurance Company as in *Baljit Kaur's* case for recoupment. He submits that similar liberty may be granted to the appellant – Insurance Company in the present three appeals as well.

10. The request made by Mr. A. H. Patil, the learned Counsel for the appellant is both reasonable as well as correct. Therefore, his request is accepted and it is made clear that liberty will be available to the appellant – Insurance Company to seek

recoupment in terms of law laid down in the case of *Baljit Kaur* (supra). This will be consistent with the similar liberty granted by the Coordinate Bench in its judgment and order dated 24.10.2008 by disposing of First Appeal No.1288/2008.

11. Therefore, these First Appeals are dismissed, but with liberty in the aforesaid terms to the appellant-Insurance Company.

12. Pending application(s), if any, do not survive(s) and even the same are disposed of.

13. Since, the appeals are dismissed, the respondents – claimants are permitted to withdraw the balance compensations along with interest, if any, as may have accrued thereto from the Registry of this Court.

14. The Registry to facilitate such withdrawal, preferably for making payments directly into the claimant's account without insisting upon the claimants filing another pursis before this Court for orders. This exercise should be completed by the Registry at the earliest.

(M. S. SONAK, J.)