

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

FIRST APPEAL NO.1595 OF 2008

[The Oriental Insurance Company Limited .vs. Shri Laxman Haribhau Bende and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM: M.S. SONAK, J.

DATED: DECEMBER 10, 2021.

P.C.

None for the appellant or the respondents.
Normally such an appeal would have to be dismissed for non-prosecution. But having regard to the year of its institution and the fact that the issue raised is settled by the decisions of this Court and the Hon'ble Supreme Court, reasons are given for the dismissal.

2. The insurance company challenges the impugned award dated 22.8.2008 made by the Motor Accident Claims Tribunal (Tribunal), Akola in M.A.C.P. No.107/2006 *inter alia* on the ground that in this case 'pay and recover' order ought not to have been made.

3. From the perusal of the memo of appeal, it is apparent that only the grievance of the insurance company is the direction given to the insurance company to pay the amount of compensation in the first place to the claimant and thereafter recover the same from the owner and driver.

4. In my judgment, from the facts of the present case, the 'pay and recover' order was quite correctly made by the Tribunal. The Tribunal relied on the decision of this court in **United India Insurance Company Limited .vs. Kamal Maruti Darekar and others, 2007 (6) ALL MR 392**. Besides, the Hon'ble Supreme Court in **Pramod Kumar Agrawal and another .vs. Mushtari Begum and others, 2004 ACJ 1903**, **National Insurance Company Limited .vs. Baljit Kaur and others, 2004 ACJ 428** and **Shamanna and another .vs. Divisional Manager, Oriental Insurance Company Limited and others, 2018 ACJ 2163** has also approved the practice of making the pay and recover orders in such matters.

5. In this case, the only ground on which the insurance company has been exonerated is that insured the tractor under the Kisan Package Policy and the owner had to use the tractor only for agricultural operations. Without going into the correctness of this reasoning, it will have to be held that the Tribunal, in such circumstances, was very much justified in making pay and recover order. The approach of the Tribunal is consistent with the decision of this court as well as the Hon'ble Supreme Court in similar matters. Therefore, this appeal is liable to be dismissed and is hereby **dismissed**. Interim order, if any, is hereby vacated.

6. If the insurance company has deposited the compensation amount in this court, then the respondents are entitled to withdraw the same together with the interest they may have approved thereon.

7. The registry to ensure that this amount together with accrued interest is transferred into the account of the claimants at the earliest.

[M.S. SONAK, J.]

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