

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**FIRST APPEAL NO. 147 OF 2001**

**WITH**

**CIVIL APPLICATION NO. 2577 OF 2001**

**IN**

**FIRST APPEAL NO. 147 OF 2001**

1. Anjebhau Gulab Chavan  
Age : 28 years, occ : agri., & owner  
R/o Pahegaon, Taluka and  
District Jalna.
2. Gulabrao Goverdhan Rathod  
(Died) through LRs
- 2-A. Panchfulla w/o Gulabrao Rathod  
Age : 55 years, occ : household  
R/o Pimparkhed, Tq. Sindkhed  
Raja, District Buldana.
- 2-B. Jitendra Gulabrao Rathod  
Age : 30 years, occ : private service  
R/o as above.
- 2-C. Yogesh Gulabrao Rathod  
Age : 27 years, occ : agri.,  
R/o as above.
- 2-D. Jyoti Gulabrao Rathod  
@ Jyoti Dasu Pawar  
Age : 40 years, occ : household  
R/o Warje, Pune.
- 2-E. Varsha Gulabrao Rathod  
@ Varsha Surendra Jadhav  
Age : 35 years, occ : household  
R/o Kalpataru Park, Jalna.

Appellants

Versus

1. Oriental Insurance Co. Ltd.  
At Washim through its  
Divisional Officer, Indraprastha,  
Adalat Road, Aurangabad.

2. Radhabai w/o Suryabhan Gunjal  
Age : 41 years, occ : household  
R/o Dusarbid, Taluka Shindkhed Raja,  
District Buldana.
  3. Sunil Suryabhan Gunjal  
Age : 20 years, occ : student  
R/o as above.
  4. Vijay s/o Suryabhan Gunjal  
Age : 19years, occ : student  
R/o as above.
  5. Ratnamala d/o Suryabhan Gunjal  
Age : 17 years, occ : student  
R/o as above.
  6. Chimaji s/o Aniba Gunjal  
(Deleted)
  7. Rukhmanibai w/o Chimaji Gunjal  
(Deleted)
- Respondents

...

Mr. N.Y. Kingaonkar, Advocate for the appellants.  
Mr. Rupesh Bora, Advocate holding for Mr. P.P. Bafna,  
Advocate for respondent No.1.

...

CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 23.09.2022.  
Judgment pronounced on : 14.11.2022.

**Judgment:**

1. The appellants, who are the respective owner and driver of the offending vehicle, has challenged judgment and order passed by Ex-officio Member of the Motor Accident Claims Tribunal at Aurangabad (hereinafter referred to as "the learned Tribunal") in M.A.C.P. No. 429/1997 only on the

ground that the present respondent No.1 i.e. the original respondent No.3 – Insurance Company has been wrongly exonerated by the learned Tribunal.

2. It is not disputed that the accident took place on 24.05.1997 in between 6.00 a.m. and 6.30 a.m. in front of Gayatri Company at Shekta, Taluka Karmad, District Aurangabad, since the offending jeep bearing registration No.MH-20-A-8922 was turned upside down and one Suryabhan Gunjal, who is the husband of present respondent No.2 and father of respondent Nos.3 to 6, died on the spot in the said accident.

3. It is significant to note that during the pendency of appeal, there was settlement between present appellants and respondent Nos.2 to 5 who are the original claimants. Moreover, respondent Nos.6 and 7, the parents of deceased Suryabhan, were also deleted due to their death. However, as per one clause of the said settlement deed, the appeal could not be disposed of even though agreed claim was satisfied by the present appellants. As per the said clause, the present respondent Nos.2 to 5 were supposed to refund the amount of compensation in case the present appeal is allowed and respondent No.1 Insurance Company is held liable for paying

compensation to the claimants. As such, there is no role of the claimants in the present appeal and it is only in between the appellants and Insurance Company.

4. Learned Counsel for the appellants strenuously submitted that the learned Tribunal has wrongly exonerated the Insurance Company despite the fact that the Insurance Company could not establish the fact by adducing cogent evidence that the offending jeep was in fact driven at the time of accident on hire and reward basis. He submitted that no charge under Section 66 read with Section 192 of the Motor Vehicles Act, 1988 was established by the Criminal Court against the driver of offending vehicle i.e. present appellant No.2. He further submitted that the learned Tribunal did not appreciate properly the evidence on record and wrongly discarded the oral evidence of respondent No.2 Radhabai i.e. the wife of deceased mentioning that they had not hired the offending jeep at the time of accident. Besides such submissions, the learned Counsel for the appellants also relied on the judgments in the cases of (1) *Narcinva V. Kamat vs. Alfredo Antonio Doe Martins* reported in *1985 SCR (3) 951* and (2) *Aniket Shet vs Allabaksh Immamsab Shaikh* reported in *Laws (Bom)-2002-8-85*.

5. On the contrary, learned Counsel for respondent No.1 – Insurance Company strongly opposed the submissions made on behalf of the appellants and supported the impugned judgment. He submits that appellant No.1 – owner never stated in the written statement that instructions were given to appellant No.2 – driver for not to give the vehicle on hire and reward basis. He submits that the jeep was registered as a private car and no premium was paid for covering the risk of passenger while it was insured. According to him, despite being a private car, it was used for hire and reward purpose in breach of policy condition, and therefore, the learned Tribunal rightly exonerated the Insurance Company from the liability of paying compensation to the claimants.

6. The only aspect which is to be considered is, whether the learned Tribunal has rightly exonerated the Insurance Company from the liability of paying compensation. Admittedly, at the time of accident the offending jeep was insured with respondent No.1 – Insurance Company. However, the Insurance Company had taken a defence in its written statement that the insurance policy of the offending vehicle was a private car policy and as per the conditions of the

policy, the jeep was not allowed to use on hire and reward basis. The Insurance Company also claimed that there was no premium for covering risk of the passengers of the said jeep. When the said jeep was used at the time of accident on hire and reward basis, the Insurance Company cannot be held liable for paying compensation. It is significant to note that the claimants have raised contention that at the time of accident respondent No.2 was driving the jeep and they were not travelling in the said jeep on hire and reward basis, but as usual passengers since the deceased Suryabhan and appellant No.2 Gulabrao were friends. However, the First Information Report at Exh. 22 itself clearly indicates that it was revealed from the investigation that appellant No.2 Gulabrao had carried the deceased and other persons as fare paying passengers on account of marriage ceremony. It is significant to note that the claimants themselves filed the said F.I.R.on record and also relied on the same.

7. It is extremely important to note that appellant No.1, who is the owner of offending vehicle, did not examine himself to clarify the contents of the F.I.R. Moreover, though appellant No.2 Gulabrao was examined on behalf of the claimants, but he conveniently kept mum in respect of the

peculiar contents of the F.I.R. wherein it has been clearly mentioned that he was using the offending jeep for hire and reward purpose.

8. It is significant to note that the learned Tribunal in the impugned judgment has clearly observed that the appellant No.1 did not examine himself in order to establish that the jeep was given to the deceased for attending the marriage without taking any fare. Moreover, evidence of appellant No.2 Gulabrao is also not convincing on this point since though he stated that he was also invited for the said marriage, but could not produce the wedding card to substantiate his claim. On the contrary, the Insurance Company had come before the learned Tribunal with a specific case that the insurance policy was issued in respect of the offending jeep being a private car, and therefore, the F.I.R. indicates that the jeep was being used on hire and reward basis at the time of accident. There is clear-cut breach of condition of policy. It is extremely important to note that despite such defence the appellants did not care to falsify the same by producing the policy, to establish that the Insurance Company was liable to pay compensation under the said policy.

9. Learned Counsel for the appellants heavily relied on the aforesaid judgments. The Hon'ble Supreme Court, in the case of *Narcinva V. Kamat vs. Alfredo Antonio Doe Martins* (supra) has made the following observation :

*“14. The last question is whether he had a valid driving licence. The High Court has not recorded a clear cut finding on this point. The finding of the Tribunal is more evasive than the one by the High Court. Mr. Sharma did not dispute that the second appellant had driving licence. His grievance is that he having failed to produce the same when called upon to do so in the cross examination, an adverse inference be drawn against him that he did not have a valid licence to drive a pick-up van. The submission fails to carry conviction with us. The burden to prove that there was breach of the contract of insurance was squarely placed on the shoulders of the insurance company. It could not be said to have been discharged by it by a mere question in cross-examination. The second appellant was under no obligation to furnish evidence so as to enable the insurance company to wriggle out its liability under the contract of insurance. Further the R.T.A. which issues the driving licence keeps a record of the licences issued and renewed by it. The insurance company could have got the evidence produced to substantiate his allegation. Applying the test who would fail if no evidence is led, the obvious answer the insurance company”.*

However, in the instant matter, there is no such case that appellant No.2 being a driver of offending vehicle was driving the jeep without valid driving licence which was to be established by the Insurance Company.

10. Further, this Court in the case of ***Aniket Shet vs Allabaksh Immamsab Shaikh*** (supra) has made the following observations in para Nos. 10 and 12 :

*“10. In Swaran Singh (supra), the Hon'ble Supreme Court has held that the statutory provision limits the defenses available to an Insurance Company. Furthermore, the insurer must establish a breach on the part of the insured. The party that alleges the breach must prove the same. The Insurance Company is thus required to establish a breach of any of the insurance policy terms by cogent evidence. If the Insurance Company fails to prove that there has been a breach of the insurance policy conditions, then the Insured Company cannot be absolved of its liability.*

*12. In this case, as noted earlier, the Insurance Company neither led any evidence nor bothered to produce on record the insurance policy. Thus, there is no clarity about whether there were any terms and conditions in the insurance policy about driving under the influence of alcohol. The Insurance Company at least, in this case, has not discharged the burden that the law had placed upon it”.*

However, the liability upon the Insurance Company in that case was for to discharge the burden of

showing that the driver of offending vehicle in that case was under the influence of alcohol. As such, both the aforesaid judgments are not helpful to the appellants, since in the F.I.R. itself it has been made clear that appellant No. 2 was driving the vehicle on hire and reward basis despite it being a private car.

11. Thus, considering all the above-discussed aspects, I do not find any substance in the appeal, and therefore, the appeal stands dismissed. Pending Civil Application is disposed of accordingly.

**(SANDIPKUMAR C. MORE, J.)**