IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1193 OF 2004

The New India Assurance Company Ltd,
having it's Registered and Head office
at New India Assurance Building, 87,
M.G.Marg, Fort, Mumbai and Divisional office,
at Aurangabad and Nanded

APPELLANT
(Ori. Resp. No. 2)

-VERSUS-

1. Waman Kalu Pawar (died),
Through his LR's

1-A Janabai Waman Pawar
Age : 62 years, Occu. : Household,

1-B Baban Waman Pawar,
Age : 42 years, Occu. : Agriculture,

both R/o. : Parasram Naik Tanda,
Post. Mandvi, Tq. Kinwat, Dist. Nanded

2. Sunilkumar G., Age : Major
Occ : Business, R/o 129, Ratanlal Nagar,
Kanpur (U.P.)

3. National Insurance Company Ltd.,
Branch Kanpur, (U.P.).

. ..**RESPONDENTS**

...

Advocate for Appellant : Mr.Mohit R. Deshmukh
Advocate for Respondent No.3: Mr. V.N. Upadhye

...

CORAM : S.G.DIGE, J.

RESERVED ON : 30.09.2022
PRONOUNCED ON : 13.10.2022

JUDGMENT :

Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Nanded, the appellant – original respondent no.2 preferred this appeal.

2. It is the contention of the learned counsel for the appellant that the judgment and award passed by the Tribunal against the appellant company is illegal, invalid and against the provisions of law and facts of the case. When the Tribunal has come to conclusion that the offending vehicle i.e. truck was involved in the accident then liability fastened on the appellant is illegal. The learned counsel further submits that the Tribunal has failed to take into consideration that the claimant/injured is the owner of the vehicle i.e. Jeep, which was also involved in the accident. The truck gave a dash to Jeep. Jeep was

insured with the appellant company, therefore, the injured-claimant is not a third party for the appellant company. The Tribunal has mechanically passed the order holding that the appellant company liable to pay the compensation without considering the plea raised by the appellant. Hence requested to allow the appeal. He relied on the judgment in the case of ***Dhanraj Vs. New India Assurance Co. Ltd. and another*** reported in ***(2004) 8 SCC 553.***

3. It is the contention of the learned counsel for the respondents that two vehicles were involved in the accident. Injured was traveling in a jeep. The Jeep was insured with the appellant. The Tribunal has passed the order to pay compensation jointly and severally, which is legal and valid.

4. I have heard all the learned counsel. Perused the judgment and order passed by the Tribunal.

5. Issue involved in this appeal is whether the owner of the Jeep can be considered as third party ?

6. In my view, third party compensation claim under the Motor Vehicles Act, 1988 (for short, “the M.V. Act”) arises out of tortuous liability. The first and primary liability is of driver. The liability of owner is an indirect liability (vicarious liability) that is counted absolute and at par with the driver. Liability of insurer is contractual one. Chapter XI of the M.V. Act entitles only third party to lodge a claim either under section 166 or under section 163-A of the M.V. Act. Therefore, the claimant or victim of the accident must be a third party, which if not disentitles the victim or his/her heirs to the compensation receivable under this chapter. In the present case, at the time of accident the respondent – original claimant was driving the vehicle and he is also owner of the Jeep. The claimant has added the Insurance Company of Jeep as party, whereas, the F.I.R. is registered against the offending truck, who gave dash to Jeep. In my view, as per the view of the Hon’ble Apex Court in the case of ***Dhanraj Vs. New India Assurance Co. Ltd., and another (supra),*** New India Insurance Company is not liable to pay compensation to the owner of

vehicle. In the present case there was contract between the claimant and the appellant – Insurance Company. The owner can not be considered as third party but, the Tribunal has not considered this fact and has fastened liability against the appellant as joint and severally, which is illegal.

7. In view of the above, I pass the following order :-

ORDER

(i) The appeal is allowed.

(ii) The appellant – insurance company is exonerated from paying compensation to the original claimant.

(iii) The appellant is permitted to withdraw the amount deposited along with accrued interest including the statutory amount.

(iv) No order as to costs.

[S.G.DIGE]
JUDGE

SGA/-