**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FIRST APPEAL NO. 1030 OF 2006**

Oriental General Insurance Co. Ltd.
Branch Office at Subhash Road, Beed,
Through its Divisional Manager,
Divisional Office, Adalat Road,
Aurangabad.

. **..APPELLANT**
(Original respondent no.2)

**VERSUS**

1. Sushilabai W/o Anantrao Shinde
Age : 55 years, Occ : Household,
R/o Hoal, Tq. Kaij,
Dist. Beed.

2. Dhananjay S/o Anantrao Shinde
Age : 26 years, Occ : Education,
R/o As above.

3. Samyanti-Vijay S/o Anandrao Shinde
Age : 19 years, Occ : Nil,
R/o As above.

4. Kishanrao S/o Dadarao Patil
Age : 47 years, Occ : Business &
Agri., R/o Dhanora, Tq. Ambajogai,
Dist. Beed

5. Balasaheb S/o Dattatraya Patil
Age : 35 years, Occ : Driver,
R/o As above.

. **..RESPONDENTS**
(R. Nos.1 to 3 – Ori. Claimants
& R.Nos.4 & 5 - Original R.Nos.1 and 3)

...
Advocate for Appellant : Mr.M.K. Goyanka
Advocate for Respondent Nos.1 & 2 : Mr. S.K. Naikwade
...

**CORAM : S.G.DIGE, J.**

DATE : 10.10.2022

**JUDGMENT** :

Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Ambajogai (for short, “the Tribunal), the appellant-insurer (original respondent no.2) preferred this appeal.

2. It is contention of the learned counsel for the appellant that the Tribunal has fastened liability on the appellant being insurance company of offending vehicle, but the Tribunal has not considered the plea raised by the appellant in respect of breach of insurance policy. At the time of accident all the persons in the offending vehicle were fare paying passengers. It was breach of terms and conditions of the insurance policy, but it was not considered by the Tribunal. The learned counsel further submits that though the owner of Jeep died during pendency of the

claim petition, his heirs and legal representatives have not been brought on record. The insurance being a contract of indemnity, unless a primary liability of insured is established and fastened on insured, the insurer is not required to indemnity the damage or liability. But this fact was not considered by the Tribunal. Hence requested to allow the appeal.

3. It is contention of the learned counsel for respondent no.1 that the appellant failed to prove that occupants in the offending Jeep were fare paying passengers. Though respondent no.1 died during pendency of the claim petition, it would not be a ground to exonerate the appellant from paying compensation. The order passed by the Tribunal is legal and valid.

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

5. The issues involved in this appeal are whether

the occupants in the offending Jeep were fare paying passengers and is there breach of terms of insurance policy and whether due to death of owner of offending Jeep, the appellant is not liable to pay compensation.

6. The first information report is at Exhibit-25-C. In this first information report, it is not mentioned that the occupants in the Jeep were fare paying passengers. There is no plea taken by the appellant before the Tribunal that the occupants in the Jeep were fare paying passengers. Moreover, the appellant has not examined any witness to prove that the occupants in the offending Jeep were fare paying passengers. In absence of any evidence from the appellant before the Tribunal to prove that the occupants in the Jeep were fare paying passengers, it cannot be considered as fare paying passengers. Hence, I do not find merit in the contention of the learned counsel for the appellant that the occupants in the Jeep were fare paying passengers.

7. In respect of issue of death of owner of the offending Jeep during pendency of the claim petition and not adding his heirs and legal representative as parties, this Court (Coram : Smt. Vibha Kankanwadi, J) in First Appeal No.302/2019 has held that on the date of accident the insured was admittedly alive and on the date of filing of the petition also the insured was alive, therefore, the insurance company is liable to pay compensation in absence of bringing the heirs and legal representatives of respondent no.1 on record. In the present case, at the time of filing the claim petition, respondent no.1 was alive. During the pendency of the claim petition, he died. Though his heirs and legal representations had not taken on record, it does not mean that the appellant can be exonerated from the liability as offending vehicle was insured with the appellant. Therefore, the appellant is liable to pay compensation. Hence, I pass the following order :-

**<u>ORDER</u>**

(i) The appeal is dismissed.

(ii) No order as to costs.

(iii) Respondent nos.1 to 3 are permitted to withdraw the amount deposited along with accrued interest thereon, if already not withdrawn.

**[S.G.DIGE]**
**JUDGE**

SGA/-