

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

907. FIRST APPEAL NO. 3397 OF 2016

The New India Assurance Company Ltd.
A Subsidiary of the General Insurance
Corporation of India and a Company
Incorporated under the Companies Act
having one of its Divisional office at
Adalat Road, Aurangabad
Through its authorized signatory

.. APPELLANT
[Orig.Resp.No.2 & 3]

VERSUS

1] Sushilabai w/o. Pralhad Jukle,
Age 45 yrs., Occ. Household,
r/o. Hangarga, Tk.Mukhed,
Dist. Nanded.
At present Somesh Colony,
Nanded.

2] Balaji Sheshrao Karlekar,
Age Major, Occ. Business
R/o. Saily Sivassa-396 230
Dadra Nagar, Haveli,
Silvassa, Tk. Silvassa,
Dist. Stirase.

.. RESPONDENTS
[Resp.No.1 Org.Claimant and
Resp.No.2 : Org.Resp.No.1]

...

Mr.Ajit B. Kadethankar, Advocate for the appellant.
Mr.Mahesh V. Ghatge, Advocate for respondent no.1.

...

CORAM : S.G.DIGE, J.
DATE : 30.08.2022

P.C. :

1] Being aggrieved and dissatisfied by the judgment and award passed by the Motor Accident Claims Tribunal, Nanded, the appellant – original respondent nos.2 and 3 preferred this appeal.

Brief facts of the case are as under:

2] The deceased Nagendra was working as a cleaner on the vehicle tempo bearing No. DN-09-9491 on monthly salary of Rs.2,000/- and Bhatta of Rs.50/- per day. On 30.05.2004 at about 5.30 p.m. he was traveling in the said vehicle from Parali to Beed. The driver drove the said vehicle in high speed in rash and negligent manner and gave dash to babool tree thereby Nagendra, who was traveling in the said vehicle and who was cleaner died on the spot. Crime was registered against the driver of the tempo.

3] Respondent no.1 filed claim petition for getting compensation before the Motor Accident Claims Tribunal,

Nanded [for short 'the Tribunal']. Considering the evidence on record and after hearing the parties, the Tribunal has awarded the compensation. The said judgment and order is under challenge.

4] The learned counsel for the appellant submits that the Tribunal has passed the judgment and order of pay and recover. There was breach of terms and conditions by the owner of the vehicle, hence, the Tribunal should not have passed the said order.

5] The learned counsel for respondent no.1 submits that the issue of pay and recover is no more res integra. The Hon'ble Apex Court in the case of **Pappu & others Vs. Vinodkumar Lamba & another reported** in 2018 [3] SCC 208 has held that the pay and recover order can be passed.

6] I have heard both learned counsel. The issue of pay and recover is no more res integra in view of the judgment of the Hon'ble Apex Court in the case of **Pappu &**

others Vs. Vinodkumar Lamba & another [supra], the appellant shall pay the compensation amount to respondent no.1 and thereafter recover it from the owner of the vehicle.

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

ORDER

i] The appeal is dismissed.

ii] No order as to costs.

iii] Respondent no.1 is permitted to withdraw the deposited amount along with accrued interest thereon.

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

DDC