

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

**(1) FIRST APPEAL NO. 2002 OF 2019 WITH
CIVIL APPLICATION NO. 1653 OF 2022 AND
CIVIL APPLICATION NO.7616 OF 2019**

- 01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)
- 02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad. ..Appellants

Versus

- 01 Limbubai @ Lodabai w/o Bhivaji
@ Bhivsaji Guhade,
age: 62 years, Occ: labour, Now Nil,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)
- 02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.) Respondents

**WITH
(2) FIRST APPEAL NO. 2008 OF 2019 WITH
CIVIL APPLICATION NO. 1650 OF 2022 AND
CIVIL APPLICATION NO.7622 OF 2019**

- 01 Bajaj Allianz General Insurance

Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad.

..Appellants

Versus

01 Tulsabai Baliram Bombale,
age: 53 years, Occ: labour, Now Nil,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.)

Respondents

WITH
(3) FIRST APPEAL NO. 2003 OF 2019 WITH
CIVIL APPLICATION NO.7617 OF 2019

01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,

through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad.

..Appellants

Versus

01 Sharda d/o Baburao Gaikwad,
age: 16 years, Occ: Education,
Being minor, under guardianship of
her father Baburao s/o Namdevrao
Gaikwad, age: 39 years, Occ: Agri.,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.)

Respondents

**WITH
(4) FIRST APPEAL NO. 2004 OF 2019 WITH
CIVIL APPLICATION NO.7622 OF 2019**

01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad.

..Appellants

Versus

01 Gayabai w/o Sonba Walke,

age: 55 years, Occ: Agri., Now Nil,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.) Respondents

**WITH
(5) FIRST APPEAL NO. 2007 OF 2019 WITH
CIVIL APPLICATION NO. 1657 OF 2022 AND
CIVIL APPLICATION NO.7621 OF 2019**

01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad. ..Appellants

Versus

01 Barkubai Narayan Barage,
age: 61 years, Occ: labour, Now Nil,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.) Respondents

WITH

**(6) FIRST APPEAL NO. 2006 OF 2019 WITH
CIVIL APPLICATION NO. 1656 OF 2022 AND
CIVIL APPLICATION NO.7620 OF 2019**

01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad.

..Appellants

Versus

01 Anusayabai Gyanba Walke,
age: 61 years, Occ: labour, Now Nil,
R/o Adad, , Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.)

Respondents

**WITH
(7) FIRST APPEAL NO. 2005 OF 2019 WITH
CIVIL APPLICATION NO.7619 OF 2019**

01 Bajaj Allianz General Insurance
Co. Ltd., through its Divisional
Manager, Block No. 603, 6th Floor,
Shreeram Shyam Tower, Kingsway
Sadar, Near NIT Building,
Nagpur-440 001 (M. S.)

02 Bajaj Allianz General Insurance
Co. Ltd., through its Branch Manager,
3rd Floor, Kothari Complex,
Shivaji Nagar, Nanded,
Tq. & District Nanded-431 602,
through its Manager/Authorized
Signatory, ABC Complex, 3rd Floor,
Near Prozone Mall, MIDC Chikalthana,
Tq. & District Aurangabad. ..Appellants

Versus

01 Renuka Dnyaneshwar Sabale,
age: 41 years, Occ: labour, Now Nil,
R/o Dhanaj, Post: Mulava,
Tq. Umerkhed, District Yeotmal (M.S.)

02 Sahebrao Gyanoba Kubade,
age: major, Occ: Business,
R/o Mohadari, Post: Mulava,
Tq. Umerkhed, Dist. Yeotmal (M.S.) Respondents

Mr. S. G. Chapalgaonkar, advocate for the Appellants
Mr. G. K. Muneshwar, advocate with for the Respondent No.1-
claimants.

CORAM : SANDIPKUMAR C. MORE J.

DATE : 26th September, 2022.

ORAL JUDGMENT :

1 Heard learned Counsel for the appellants-Insurance
Company and learned Counsel for Respondent No.1-original
claimants.

2 In all these appeals, withdrawal applications are
pending, which are filed by the respective applicants-claimants.

3 The learned Counsel for the original claimants-, though relied on the judgment of this Court in the case of **Divisional Controller, Maharashtra State Road Transport Corporation, Jalgaon Vs. Bapu Onkar Chaudhari**, reported in 2006 (4) MhLJ 990, and submitted that all these appeals are not maintainable since they are filed against the order passed under Section 140 of the Motor Vehicles Act, 1988. However, he fairly admits that the issue of maintainability, in such cases, has been already settled by the Hon'ble Apex Court in the judgment in the case of **Yallwwa and others Vs. National Insurance Co. Ltd., & another**, reported in AIR 2007 SC 2582, wherein it is held that such appeals are maintainable under Section 173 of the Motor Vehicles Act, 1988.

4 The learned Counsel for the appellants-Insurance Company submitted that all the claimants, in these matters, were in fact gratuitous passengers and, therefore, not entitled for compensation from the Insurance Company as their risk was not covered under the policy.

5 Under such circumstances, it may be difficult for either of the parties to contest the main Claim Petition, if any finding is

given, in these matters, at this juncture. I am, therefore, of the opinion that all these appeals can be disposed of by directing the learned Tribunal to dispose of the main Claim Petitions on its own merits by considering the issue involved in these matters independently and without being influenced by the observations in the impugned orders.

6 Accordingly, following order is passed:

(i) All these appeals are disposed of with direction to the learned Tribunal to decide all the main Claim Petitions expeditiously and as far as possible within the period of nine months from the date of receipt of this order, without being influenced by the findings in all these impugned orders.

(ii) The amounts deposited by the appellant-Insurance Company with this Court, in all these appeals, be transmitted to the learned Tribunal with a direction to invest the same in Fixed Deposit Receipts in any Nationalised Bank till the final decision of the Claim Petitions. The disbursement of these amounts shall be subject to the final outcome of the main Claim Petitions.

(iii) It is made clear that this Court has not given any finding on the merit and the learned Tribunal shall decide the main Claim Petitions independently and in the light of facts of each of the respective Claim Petitions.

(iv) The learned Tribunal is also directed to take decision independently, as to whether the appellant-Insurance Company is liable for paying the compensation amount in the light of facts of each Claim Petitions.

(v) Pending Civil Applications do not survive and stand disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

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