

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1674 OF 2016

The New India Assurance Co. Ltd,
Through its Divisional Manager,
D.O. No.I, Adalat Road, Aurangabad,
Shri. Sanjiv Ramrao Gaisamudre,
Age : 50 Years, Occ. Service,
R/o. Aurangabad.

.. APPELLANT
(Orig. Respondent No.2)

VERSUS

1. Sunderabai W/o Yadavrao Nawal,
Age : 55 Years, Occ. Household,
2. Yadavrao S/o Yashwant Nawal,
Age : 60 Years, Occ. Nil,
3. Sarjerao S/o Uttamrao Wagh,
Age : 45 Year4s Occ. Owner,
& Driver of Motorcycle,
R/o. Jadhavwadi, Aurangabad
4. Smt. Lankabai W/o Ramdas Nawal,
Age : 30 Years, Occ. Household,
5. Kum. Maheru d/o Ramdas Nawal,
Age : 8 Years, Occ. Nil,

Respondent Nos. 1,2,4 and 5
Resident of Kothara, Tq. Bhokardan,
Dist. Jalna.

RESPONDENTS
(Orig. Respondent No.3 & 4)

....
Advocate for the Appellant : Mr. M. M. Ambhore
Advocate for respondent Mr. V. D. Patnurkar
....

CORAM : S. G. DIGE, J.
Dated: August 29, 2022

The issue involved in this appeal is pay and recovery order passed by Member, Motor Accident Claims Tribunal, Aurangabad (for short the Tribunal).

2. The accident was taken place between two motorcycles on 28th January 2003. The deceased was travelling on motorcycle and given dash to the motorcycle bearing No. MH-20-AC-7974. Due to the said accident, deceased Ramdas Naval sustained injury and died. The crime was registered against respondent No.1 i.e. driver of motorcycle bearing No. MH-20-AC-7974.

3. Respondent Nos. 1,2, 4 and 5/original claimants filed claim petition before the Tribunal for getting compensation. Considering evidence on record and after hearing the parties, the Tribunal has awarded compensation and directed the Insurance Company to pay compensation and recover it from owner of motrcycle. The said judgment and award is under challenge.

4. It is contention of the learned counsel for the appellant that, at the time of accident, respondent No.1 was not holding valid and effective driving licence. There is breach of terms of policy. In spite of that, the Tribunal has passed the

order to pay the amount first and recover it from respondent No.1. Hence requested to allow the appeal.

5. Learned counsel for respondent submits that, though there is breach of terms of policy. The insurance company is liable to pay the compensation. The Hon'ble Apex Court, in the case of **Pappu and Others Versus Vinod Kumar Lamba and Another** [2018 DGLS (SC 16)] has held that, insurance company shall pay and satisfy the award with liberty to recover the same from the owner of vehicle in accordance with law. The order passed by the Tribunal is legal and valid.

3. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal. The issue related in this appeal is the order of pay and recovery passed by the Tribunal. This issue is no more *res integra*. The Hon'ble Supreme Court in the case of Pappu (supra) has held that, there is liability of insurance company to pay the compensation and recover it from owner if there is breach of condition. In view of above, I pass the following order.

ORDER

- (i) The appeal is dismissed
- (ii) No order as to costs.

- (iii) Original claimants are entitled to withdraw the amount deposited by the appellant.
- (iv) Pending Civil Applications, if any, are disposed of.

**(S.G. DIGE,)
JUDGE**

ysk