



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

**CIVIL APPLICATION NO. 13117 OF 2024
AND CIVIL APPLICATION NO. 7173 OF 2023
IN FIRST APPEAL NO. 2268 OF 2024**

Kanchandevi Hiralal Agrawal and Others ..APPLICANTS

VERSUS

The Oriental Insurance Co. Ltd.
Through its Branch Manager, Jalna
and Others ..RESPONDENTS

**WITH CIVIL APPLICATION NO. 13119 OF 2024
AND CIVIL APPLICATION NO. 10044 OF 2017
IN FIRST APPEAL NO. 2727 OF 2024**

Kanchandevi Hiralal Agrawal and Others ..APPLICANTS

VERSUS

Union of India and Others ..RESPONDENTS

....
Mr. M.R. Sonawane, Advocate for applicants
Mr. D.P. Deshpande, Advocate for respondent no.1
Mr. S.S. Rathi, Advocate for respondent nos.3 and 4
....

**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 13th DECEMBER, 2024**

PER COURT :

1. Civil Application No. 13117 of 2024 has been moved by the original claimants to bring on record the legal representatives of the owner of the car involved in the accident.

2. It was an accident between a car and railway. The legal representatives of the deceased car occupants preferred claim petitions under Section 166 of the Motor Vehicles Act. The tribunal decided all those claim petitions. This application has been moved by one of the appellants, who preferred the first appeal against the judgment and award passed in one of such claim petition, no. 45 of 2010.

3. Strong objection has been raised on behalf of the respondent – insurance company, contending that in the claim petition negligence of the driver of the car involved in the said accident has not been averred/pleaded. The owner of the car was not made party respondent in the claim petition inspite of grounds having been raised. The claimants were very much aware that liability of the insurance company is towards the owner of the vehicle, with whom the contract is, primarily held liable to pay compensation. As such, it is a contract of indemnity. When the owner of the vehicle was not party to the claim petition itself, the insurance company would have no liability at all. This defect cannot be cured at later stage, more so when those grounds were not raised in the claim petition and the claimants were very much aware thereof. Even claimant did not prefer appeal.

4. We have considered the submissions advanced. The present appeal is nothing but continuation of the original claim petition. There is no

dispute that contract of insurance is a contract of indemnity between the owner of the vehicle and the insurer. In such a case, alongwith the insurance company, the insurer, other side of the contract i.e. the owner of the vehicle ought to have made a party to the claim petition. Learned counsel for the original claimants brings to our notice that it to be a case of composite negligence. Both, the insurer of the car and the railway would be jointly and severely liable to pay compensation. We do not wish to go into merits of the matter.

5. The procedural law is a handmade to judicial process. Needless to mention, the original claim petition is a death claim. In the interest of justice, we allow the application with a rider that if the claim petition is allowed, the claimants will not be entitled to component of interest on the amount of compensation that may be awarded till this date. Meaning thereby, if the award is passed directing the respondent – insurance company to pay the compensation, the tribunal will take into consideration that interest would be calculated from the date on which the owner of the vehicle is made party to the claim petition. We also hope that by way of amendment the claimants will not withdraw any admissions appearing in the claim petition.

6. In view of above, the application is allowed setting aside the impugned award i.e. award dated 18th February 2017 passed by learned

Member, M.A.C.T., Jalna in M.A.C.P. No. 45 of 2010. It is made clear that the evidence which has already been recorded, shall form part of the record and can be read in evidence. The parties are at liberty to adduce additional evidence, relevant post addition of owner of the vehicle. In the result, First Appeal No. 2268 of 2024 stands disposed. In view of the same, pending Civil Application No. 7173 of 2023 for withdrawal of amount stands disposed of.

7. In the aforesaid terms, Civil Application No. 13119 of 2024 preferred by the very applicants therein is allowed and First Appeal No. 2727 of 2024 and Civil Application No. 10044 of 2017 therein for stay also stands disposed of accordingly. We expect the tribunal to decide the claim petition/s within eight months from the date of carrying out of the amendments (addition of legal representatives of owner of the car).

(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)

SSD