



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

**968 CIVIL APPLICATION NO. 13424 OF 2023
IN FIRST APPEAL NO.2149 OF 2010**

**SHOBHA BALAJI LAMTURE (DIED) THR LRS. DHIRAJ
BALAJI LAMTURE AND ORS**

VERSUS

**NATIONAL INSURANCE CO. LTD. THR BRANCH
MANAGER, LATUR AND ORS**

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Advocate for Applicant : Adv.R.P.Adgaonkar
Advocate for Respondent no.1 : Adv.S.V.Kulkarni
Advocate for respondent no.3 : Adv.A.M.Phule

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CORAM : ARUN R. PEDNEKER, J.

DATE : 10.04.2024

P.C. :

1] Heard the learned counsel for the parties.

2] The appeal is filed by the Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal thereby awarded the compensation to the claimants.

3] The learned counsel for the Insurance Company submits that the vehicle was of more than 7500 kg and the driver of the vehicle is possessing license to drive light

motor vehicle, while the insured vehicle driven was a heavy vehicle.

4] The learned counsel for the claimants submits that in the event, the appeal filed by the Insurance Company is allowed, the Insurance Company is entitled to recover the amount from the insured / owner of the vehicle. The claimant is still entitled to receive the entire amount from the insurance company on the principle of “Pay and Recover”.

5] Since the appeal of the insurance company is on the ground of ‘non holding of valid licence” by the driver of the insured vehicle, even if the insurance company succeeds on the said ground, the insurance company would still be liable to pay the claim amount to the claimants and will be entitled to recover the same from the insured on the principle of “Pay and Recover”.

6] In view of the same, Civil Application is allowed. The applicants are permitted to withdraw the entire remaining amount deposited by the Insurance Company in this Court along with accrued interest thereon, subject to furnishing an undertaking to the satisfaction of the learned Registrar [Judicial] of this Court. Civil Application is disposed of accordingly.

7] List First Appeal No.2149 of 2010 for final hearing in the final hearing board in due course.

[ARUN R. PEDNEKER]
JUDGE

DDC