

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 131 OF 2024

United India Insurance Company Limited } 5 th Floor, Bharati Vidyapeeth Bhavan, Lal } Bahadur, Shastri Road, Pune-411 030. }	(Org. Opponent No.3)Appellant
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Versus

1. Smt.Basavva Khajappa Naykode } Age-35 years, Occ : Household } }	(Org. Applicant No.1)
2. Shri.Rajshekhar Khajappa Naykode } Age-25 years, Occ : Household } }	(Org. Applicant No.2)
3. Shri.Chandrashekar Khajappa Naykode } Age-23 years, Occ : Education } Resident of Applicant No.1 to 3 : Pathare Vasti } Loni Kalbhor Police Station, Taluka-Haveli } }	(Org. Applicant No.3)
4. Shri.Suresh Dinkar Banagar } Age-25, Occ : Driver } R/at Bhayala, Taluka-Patoda, District-Beed. } }	(Org. Opponent No.1)
5. Shri.Yogesh Rajaram Kalbhor } Age-40, Occ : Transport } R/at Loni Kalbhor, Taluka-Haveli, District- } Pune. } }	(Org. Opponent No.2)
6. Isarabai Dhondappa Naykode (Abated) } Age-70, Occ : Household } R/at Gnagadhar Kalmus, Taluka-Akkalkot, } District-Solapur. }	(Org. Opponent No.2)Respondents

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Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Mr.Ravindra S. Pachundkar Patil, for Respondent Nos.1 to 3.
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CORAM : SHIVKUMAR DIGE, J.

DATE : 26th FEBRUARY 2024.

ORAL JUDGMENT :

. The issue involved in this Appeal is pay and recover order passed by the Tribunal.

2. It is contention of the learned counsel for the Appellant-Insurance Company that the cheque which was issued as a premium of Insurance Policy by the owner of offending vehicle was dishonored. The notice was given to the owner of the vehicle about cancellation of the policy, but this fact is not considered by the Tribunal and has passed pay and recover order. The Tribunal ought to have exonerated Insurance Company from paying compensation. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimants that while passing pay and recover order the Tribunal has relied on judgment of Hon'ble Apex Court and on that basis impugned order is passed. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Pune.

5. While passing the order of pay and recover the Tribunal has relied on the judgment of Hon'ble Apex Court (i) *Pappu & Ors V/s. Vinod Kumar Lamba*¹ (ii) *Amrit Paul Singh V/s. Tata AIG General Insurance Company Limited*² (iii) *National Insurance Co. Ltd. V/s. Swaransingh & Ors*³ (iv) *Daddappa & Ors v/s. Branch Manager, National Insurance Co. Ltd.*⁴, and has observed that, if there is breach of Terms and Conditions of Insurance Company has to pay compensation to the Claimants and then recover it from vehicle owner. I do not find infirmity in it.

6. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to costs.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith interest.

1 (2018) 3 SCC 208

2 (2018) 7 SCC 558

3 (2004) ACJ 1

4 2008 ACJ 581

- (iii) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)