

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.40 OF 2024

General Manager	]	
Bajaj Allianz General Insurance Co. Ltd.	]	
Registered Address : Sumangal Business	]	(Org. R/No.2)
Court, 3 rd Floor, Near Hotel Tulsi, Yeolekar	]	
Mala College Road, Nashik.	]	...Appellant

Versus

1. Dattu Baburao Benke	]	
Age-33 years, Occ : Labour	]	
 2. Sunita Dattu Benke	]	
Age-32 years, Occ : Labour	]	
R/Nos.1 and 2 are R/at Kharadi, Taluka-	]	
Shahapur, District-Thane.	]	
 3. Manager	]	(R/Nos.1 and
Mahindra & Mahindra Ltd.	]	2 are Original
Automotive Sector,	]	Claimants &
Registered Address : Aakroli Road,	]	R/No.2 is Org.
Kandiwali (E), Mumbai.	]	R/No.1)
		...Respondents

FIRST APPEAL NO.41 OF 2024

General Manager	]	
Bajaj Allianz General Insurance Co. Ltd.	]	
Registered Address : Sumangal Business	]	(Org. R/No.2)
Court, 3 rd Floor, Near Hotel Tulsi, Yeolekar	]	
Mala College Road, Nashik.	]	...Appellant

Versus

- | | | |
|--|---|-----------------------|
| 1. Tukaram Punja Sadgir |] | |
| Age-63 years, Occ : Nil |] | |
|
2. Shankar Tukaram Sadgir |] | |
| Age-40 years, Occ : Labour |] | |
| R/Nos.1 and 2 are R/at Ambewadi, Taluka- |] | |
| Igatpuri, District-Nashik. |] | |
|
3. Manager |] | (R/Nos.1 and |
| Mahindra & Mahindra Ltd. |] | 2 are Original |
| Automotive Sector, |] | Claimants & |
| Registered Address : Aakroli Road, |] | R/No.2 is Org. |
| Kandiwali (E), Mumbai. |] | R/No.1) |
| | | ...Respondents |

FIRST APPEAL NO.42 OF 2024

- | | | |
|--|---|---------------------|
| General Manager |] | |
| Bajaj Allianz General Insurance Co. Ltd. |] | |
| Registered Address : Sumangal Business |] | (Org. R/No.2) |
| Court, 3 rd Floor, Near Hotel Tulsi, Yeolekar |] | |
| Mala College Road, Nashik. |] | ...Appellant |

Versus

- | | | |
|------------------------------------|---|-----------------|
| 1. Sunita Dattu Benke |] | |
| Age-33 years, Occ : Labour |] | |
| Handicapped by and though |] | |
| Dattu Baburao Benke |] | |
| Age-33 years, Occ : Labour |] | |
| R/at Kharadi, Taluka-Shahapur, |] | |
| District-Thane. |] | |
|
2. Manager |] | (R/No.1 is |
| Mahindra & Mahindra Ltd. |] | Original |
| Automotive Sector, |] | Claimant & R/ |
| Registered Address : Aakroli Road, |] | No.2 is Org. R/ |

Kandiwali (E), Mumbai.

] No.1)
...Respondents

Mr. Sarthak Diwan, Advocate for the Appellant in all Appeals.
Mr. Pritesh K. Bohade, for Respondent Nos.1 and 2 in
FA/40/2024 AND FA/41/2024 and Advocate for the
Respondent No.1 in FA/42/2024.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th MAY 2024

ORAL JUDGMENT :-

1. The issues involved in all appeals are same. All these appeals are against the three different judgment and Order out of the same accident hence, I am deciding these appeals by this common judgment.

2. It is contention of learned counsel for Appellant that deceased in all appeals were travelling in the offending vehicle as a fare paying passenger, there was breach of terms and conditions of insurance policy but the Tribunal has not considered this fact and has passed pay and recover order which is erroneous. Learned counsel further submitted that the Tribunal should have exonerated the insurance company from paying the compensation. Hence, requested to allow the

Appeal. Learned counsel for the Appellant relied on ***United India Insurance Co. A'Bad vs Khudbuddin Sumsherali Inamdar And Ors decided on 2nd May, 2016.***

3. It is contention of learned counsel for the Respondent/Claimant that Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

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

5. While dealing with issue of awarding compensation the Tribunal has observed that there was breach of terms and conditions of insurance policy and the Tribunal has relied on various judgment of Hon’ble Apex Court, the Tribunal has passed pay and recover order. I do not find infirmity in it. In my view, the Hon’ble Apex Court in the case of ***Anu Bhanvara and Ors. Vs. IFFCO TOKIO General Insurance Co. Ltd. & Ors., dated 9th August, 2019*** has observed that insurance company is liable to pay compensation and recover it from the owner of vehicle,

if there is breach of terms and conditions of insurance policy.

The facts of this case is squarely applicable to the present case.

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

ORDER

- i. All appeals are dismissed.
 - ii. The Claimant in all appeals are permitted to withdraw deposited amount along with accrued interest thereon.
 - iii. The statutory amount in all appeals be transmitted to the Tribunal along with accrued interest thereon. The parties in all appeals are permitted to withdraw it, as per Rule.
7. The Appellant is at liberty to recover the amount from owner of offending vehicle as directed by the Tribunal in all claim petitions. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)