IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

FIRST APPEAL NO. 230 OF 2022

APPELLANT : **1.** Bajaj Allianz General Insurance Company,
(Original Respondent No.3). Through its Divisional Manager Riaan House, 2nd, fl. Mohan Nagar, Kings way, Opp. Kasturchand Park, Tahsil and District Nagpur
Present Address … On RA

//VERSUS//

RESPONDENTS : **1.** Vikas s/o Shreeram Raut,
(Original petitioner No.1) Aged – 30 Yrs., Occu- Labourer, R/o Dongarla, Tahsil, Tumsar, District-Bhandara …. On RA

(Original respondent No.1) **2.** Kuwarlal s/o Prabhu Bhairam Aged-29 yrs. Occu. Contractor, R/o Gondekhari, Post Office-Chullad, Tah. Tumsar, Distt.- Bhandara …. On RA

(original respondent No.2) **3.** Satnamsingh Bhatia (deleted as Dead) Aged- Major, Occu, R/o Plot No.59. Gurunanakpura, Nagpur, Tah and Dist. Nagpur …. On RA

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Mrs. Mrunal Naik, Advocate for appellant in all appeals.
Ms M.M. Ghatode, Advocate for respondent No.1 in all appeals.

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WITH

FIRST APPEAL NO. 242 OF 2022

APPELLANT : **1.** Bajaj Allianz General Insurance Company,
(Original Respondent No.3). Through its Divisional Manager Riaan House, 2nd, fl. Mohan Nagar, Kings way, Opp. Kasturchand Park, Tahsil and District Nagpur
Present Address … On RA

//VERSUS//

RESPONDENTS (Original petitioner No.1)	:	1.	Dhyaneshwar s/o Ramkrishna Vithole, Aged 31 Yrs, Occu. Labourer R/o Dongarla, Tahsil Tumsar, District- Bhandara …. On RA
(Original respondent No.1)		2.	Kuwarlal s/o Prabhu Bhairam Aged-29 yrs. Occu. Contractor, R/o Gondekhari, Post Office-Chullad, Tah. Tumsar, Distt.- Bhandara …. On RA
(original respondent No.2)		3.	Satnamsingh Bhatia (deleted as Dead) Aged- Major, Occu,- Business R/o Plot No.59. Gurunanakpura, Nagpur, Tah and Dist. Nagpur …. On RA

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Mrs. Mrunal Naik, Advocate for appellant in all appeals.
Ms M.M. Ghatode, Advocate for respondent No.1 in all appeals.

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WITH

FIRST APPEAL NO. 241 OF 2022

APPELLANT (Original Respondent No.3).	:	1.	Bajaj Allianz General Insurance Company, through its Divisional Manager Riaan House, 2nd, fl. Mohan Nagar, Kings way, Opp. Kasturchand Park, Tahsil and District Nagpur Present Address … On RA

//VERSUS//

RESPONDENTS (Original petitioner No.1)	:	1.	Vilas s/o Bisan Nagrikar Aged – 29 Yrs., Occu- Labourer, R/o Dongarla, Tahsil, Tumsar, District-Bhandara …. On RA
(Original respondent No.1)		2.	Kuwarlal s/o Prabhu Bhairam Aged-29 yrs. Occu. Contractor, R/o Gondekhari, Post Office-Chullad, Tah. Tumsar, Distt.- Bhandara …. On RA

(original respondent No.2) **3.** Satnamsingh Bhatia (deleted as Dead)
Aged- Major, Occu- Business
R/o Plot No.59. Gurunanakpura, Nagpur, Tah and
Dist. Nagpur …. On RA

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Mrs. Mrunal Naik, Advocate for appellant in all appeals.
Ms M.M. Ghatode, Advocate for respondent No.1 in all appeals.

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WITH

FIRST APPEAL NO. 229 OF 2022

APPELLANT (Original Respondent No.3). : **1.** Bajaj Allianz General Insurance Company, through its Divisional Manager Riaan House, 2nd, fl. Mohan Nagar, Kings way, Opp. Kasturchand Park, Tahsil and District Nagpur
Present Address … On RA

//VERSUS//

RESPONDENTS (Original petitioner No.1) : **1.** Vinod s/o Baburao Bankar
Aged – 29 Yrs., Occu- Labourer,
R/o Dongarla, Tahsil, Tumsar,
District-Bhandara …. On RA

(Original respondent No.1) **2.** Kuwarlal s/o Prabhu Bhairam
Aged-29 yrs. Occu. Contractor,
R/o Gondekhari, Post Office-Chullad,
Tah. Tumsar,
Distt.- Bhandara …. On RA

(original respondent No.2) **3.** Satnamsingh Bhatia (deleted as Dead)
Aged- Major, Occu- Business
R/o Plot No.59. Gurunanakpura, Nagpur, Tah and
Dist. Nagpur …. On RA

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Mrs. Mrunal Naik, Advocate for appellant in all appeals.
Ms M.M. Ghatode, Advocate for respondent No.1 in all appeals.

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WITH

FIRST APPEAL NO. 226 OF 2022

APPELLANT (Original Respondent No.3).	:	**1.**	Bajaj Allianz General Insurance Company, through its Divisional Manager Near NIT Building, Sadar Nagpur Tahsil and District Nagpur … On RA

//VERSUS//

RESPONDENTS (Original petitioner No.1)	:	**1.**	Jitendra s/o Baburao Sharnagat Aged – 30 Yrs., Occu- Labourer, R/o Dongarla, Tahsil, Tumsar, District-Bhandara …. On RA
(Original respondent No.1)		**2.**	Kuwarlal s/o Prabhu Bhairam Aged-29 yrs. Occu. Contractor, R/o Gondekhari, Post Office-Chullad, Tah. Tumsar, Distt.- Bhandara …. On RA
(original respondent No.2)		**3.**	Satnamsingh Bhatia (deleted as Dead) Aged- Major, Occu, R/o Plot No.59. Gurunanakpura, Nagpur, Tah and Dist. Nagpur …. On RA

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Mrs. Mrunal Naik, Advocate for appellant in all appeals.
Ms M.M. Ghatode, Advocate for respondent No.1 in all appeals.

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CORAM : G. A. SANAP, J.
DATED : 12th MARCH, 2024

ORAL JUDGMENT

Heard.

2. **ADMIT**. Heard finally with the consent of learned Advocates for the parties. Perused the record and proceedings.

3. All these five appeals arise out of the same accident. The claimants are different. The driver and owner of the offending vehicle and insurer are same in all appeals. The evidence adduced is more or less common. Therefore, all these appeals are being disposed of by common judgment. For the purpose of narration of facts, First Appeal No.230/2022 shall be treated as lead matter.

4. In all these appeals, the challenge is to the judgments and awards passed by the Motor Accident Claims Tribunal, Bhandara, whereby the claims filed by five injured claimants have been partly allowed.

5. Background facts:-

The accident in question occurred on 04.07.2012, at about 24.00 hours. It is stated that the claimant, after attending the 13th day's programme, had gathered near the Bus Stand, Dongarla by the side of the road. It is stated that at that time, an Indica Car bearing registration No.MH-31/BB-8692 came from Tumsar side. It was driven in high speed and in a rash and negligent manner. It was driven by respondent No.1. Respondent No.1 could not control the vehicle. The offending vehicle gave a dash to the motorcycle bearing registration No.MH-35/E-3988 and also to the claimants in all these appeals gathered on the spot. They sustained serious injuries. They were shifted to S.B. Hospital, Tumsar, where they were provided first aid. Thereafter, they were shifted to the General Hospital at Bhandara. According to the claimants, they spent a huge amount on the medical treatment. The injuries sustained by them were serious in nature. They suffered permanent disabilities.

6. The report of the incident was lodged at Tumsar Police Station. Crime bearing No.69/2012 was registered against respondent No.1-Driver -Kuwarlal, s/o Prabhu Bhairam. The deceased-respondent No.2 was the owner of the offending vehicle. The offending vehicle was insured with respondent No.3. The claimants in all appeals claimed the compensation under different heads.

7. Respondent No.1 filed the written statement and opposed the claim. Respondent No.2, the owner of the vehicle, was reported to be dead at the time of service of the summons. The claim was therefore, abated against him. During the pendency of the claims, his name was deleted. Respondent No.1 denied the claims in toto. Respondent No.1 contended that the vehicle was

insured with respondent No.3 on the date of the accident and therefore the Insurance Company would be liable to pay the compensation.

8. The appellant-Insurance Company (respondent No.3) filed the written statement and denied the claim. It was contended that there was no nexus between the alleged accident and the injuries sustained by the claimants. The driver of the offending vehicle was not in any manner responsible for the accident. It was further contended that the cover note of which details have been provided in Form AA is bogus. The cover note was a fake and fabricated document. The offending vehicle was not insured with respondent No.3.

9. The claimants in all the claims have examined themselves in support of their claims. The appellant-Insurance Company examined two witnesses. Amit Yawalkar (DW-1) is the representative of the Insurance Company. Amber Chimote (DW-2) is also the representative of the appellant-Insurance Company. Learned Member of the Tribunal, on a threadbare analysis of the evidence, held that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle.

The Motor Accident Claims Tribunal has held that the claimants in all claims did not suffer permanent disabilities. The compensation was awarded under the head of medical treatment charges. Some amount is awarded under the head of pain and suffering on account of the injuries sustained by them. The Insurance Company-the appellant herein, being aggrieved by the judgment and award passed by the Tribunal in the claim petitions, filed the appeals.

10. I have heard Mrs. Mrunal Naik, learned Advocate for the appellant and Ms M.M. Ghatode, learned Advocate for the original claimants-respondent No.1.

11. In view of the facts and circumstances, the following points fall for my determination:

i) Whether the claimants have proved that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle?

ii) Whether the compensation awarded by the Tribunal is just, proper and reasonable?

iii) Whether the appellant-Insurance Company has proved that, on the date of the accident, the offending vehicle was not insured with the appellant-Insurance Company and the policy which is placed on record is a bogus policy?

iv) What order?

12. Learned Advocate for the appellant-Insurance Company submitted that voluminous documentary evidence has been adduced by the Insurance Company to justify its defence that the cover note of the offending vehicle relied upon is bogus. It is submitted that it was not issued by the appellant. Learned Advocate submitted that this fact has been proved on the basis of the evidence by Amit Yawalkar (DW-1) and Amber Chimote (DW-2). Learned Advocate submitted that the learned Member of the Tribunal has not properly appreciated the evidence on record.

13. Learned Advocate for the claimants submitted that, on minute appreciation of the evidence, the learned Member of the Tribunal has discarded the defence of the Insurance Company. Learned Advocate submitted that the conduct of the Insurance Company was properly appreciated by the learned Member of the Tribunal.

14. The driver of the offending vehicle has admitted that the offending vehicle was insured with the appellant on the date of the accident. During the course of the investigation, the documents of the vehicles were seized. The claimants have relied upon the insurance cover note. The details of this cover note have been recorded in Form-AA of the police case papers. The Insurance Company was required to establish it's defence by adducing cogent evidence. The claimants have deposed that, on the date of the accident, the offending vehicle was insured with Insurance Company. It is seen that they have deposed on the basis of the available documentary evidence, *viz-a-viz.,* the cover-note of the offending vehicle. Before appreciating the evidence of DW-1 and DW-2, examined by the appellant-Insurance Company, it would be necessary to note down certain undisputed facts. The details of the cover note have been stated in the claim petitions. Similarly, there is reference to the cover note in the police case papers. According to the Insurance Company this cover note is fake/bogus. According to the DW-1 and DW-2 the cover note relied upon as per the company's record was issued for a two wheeler vehicle. DW-1 and DW-2, have produced on record other policies to demonstrate that the cover note relied upon is bogus. It is seen that those cover notes produced by the Insurance Company are for

the financial year 2006-07. The accident, in this case, occurred on 04.07.2012. The cover note which has been relied upon is for the financial year 2012-13. The learned Member of the Tribunal has considered the oral and documentary evidence adduced by the appellant-Insurance Company. It has come on record that the appellant has only one branch at Nagpur. It has also been brought on record that the rubber seal appearing on all the documents of the Insurance Company is one and same. No code number was given on the rubber seal of the appellant.

15. It is to be noted that on the date of service of the notice in all the claim petitions, the Insurance Company was put to the notice that the claimants in all claim petitions have contended that the offending vehicle was insured with the appellant. They relied on the cover note. It was stated in the written statement that this cover note was fake, bogus/fabricated. The claim petitions were filed in 2014. The Insurance Company which is managed and run by qualified people, was supposed to take immediate action. The evidence of DW-1 and DW-2 is silent about lodging a report with the police. It is common knowledge that in every accident claim where the offending vehicle is insured with the Insurance Company, on receipt of the intimation, an internal investigation is

carried out by the Insurance Company. In this case, DW-1 has admitted that after the investigation, the report is kept in the office of the company. The evidence of DW-1 and DW-2 is silent about such an investigation. The answers given by them suggest that, the report of the investigation was prepared. They have failed to assign any reason for non production of such investigation report before the Tribunal. The witnesses have failed to assign any reason as to why they have not filed code numbers of four wheeler and two wheeler insurance policies. DW-1 has shown complete ignorance about this. DW-1 was unabled to state the name of the agent of the company to whom the cover note numbers 100001605996 to 100001609996 were assigned. The evidence of DW-1 and DW-2 has been appreciated, keeping in mind the documentary evidence placed on record. Learned Member, in the teeth of the available evidence on record, has observed that Insurance Company has miserably failed to establish its defence. On re-appreciation of the available evidence, I am satisfied that the learned Member of the Tribunal has not committed any error or mistake. In my view, therefore, no interference is warranted in the finding recorded by the learned Judge and thereby rejecting the defence of the appellant-Insurance Company.

16. Learned Member of the Tribunal has held that the evidence of the claimants, coupled with police case papers, is sufficient to prove that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. The claimants in all claim petitions have placed on record the first hand account of the accident. They have relied upon the police case papers and more particularly, the spot panchanama of the place of the accident. Perusal of the spot panchanama would show the position prevailing on the spot viz-a-viz the vehicles involved in the accident. The evidence on record is sufficient to prove that the accident occurred due to rash and negligent driving by the driver of the offending vehicle. The driver has been prosecuted by the police. A criminal prosecution is a serious matter. It cannot be filed without proper investigation and evidence. The filing of the charge-sheet indicates that the investigation conducted revealed the involvement of the driver in the accident and therefore, the charge-sheet was filed. On this count also the learned Member has properly appreciated the evidence.

17. The next important issue that has been argued is in the context of death of owner-respondent No.2 after filing of the claim petitions. The claim petitions were abated. It is also pointed out

that the name of respondent No.2 (owner) was deleted. In my view, the subsequent action of deletion of the name after abatement of the proceedings against the owner of the offending vehicle was a mere formality. The Court, in this case, would be required to consider the consequences of the abatement of the claim petitions qua the owner of the offending vehicle and the liability of the Insurance Company.

18. Learned Advocate for the Insurance Company submitted that, after abatement of the claim as against the owner of the offending vehicle, the Insurance Company could not be held liable to pay the compensation. Learned Advocate for the claimants submitted that the submissions advanced by the learned Advocate for the Insurance Company cannot be entertained in view of Section 155 of the Motor Vehicles Act, 1988.

19. In this case, the Insurance Company and the driver of the offending vehicle have been held jointly and severally liable to pay the compensation. The offending vehicle was insured with the appellant-Insurance Company. The Insurance Company was therefore liable to discharge it's obligation in view of the terms and conditions of the policy. In my view, this submission advanced by

the learned Advocate for the appellant-Insurance Company cannot be accepted in view of the express provisions of Section 155 of the Motor Vehicles Act, 1988. For the purpose of ready reference, Section 155 of the Motor Vehicles Act, 1988 is extracted below:-

> *"155. Effect of death on certain causes of action .- Notwithstanding anything contained in section 306 of the Indian Succession Act, 1925 (39 of 1925), the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of such event against his estate or against the insurer."*

20. Perusal of this section would show that death of a person in whose favour a certificate of insurance has been issued shall not be a bar to the survival of any cause of action arising out of such an event against his estate or against the insurer. In my view, this Section 155 of the Motor Vehicles Act, 1988, is answer to the submissions advanced by the learned Advocate for the appellant-Insurance Company. In view of this, the submissions cannot be accepted.

21. As far as compensation is concerned, the claimants have accepted the judgments and awards passed by the learned Member of the Tribunal. The Tribunal has recorded findings in all the claim petitions that the claimants did not suffer permanent disabilities. The compensation has been awarded under the head of medical treatment charges and medicine charges. The compensation is also awarded under head of pain and suffering. Perusal of the judgment and order shows that compensation is just, proper and reasonable. In view of this, I record my findings on point Nos. i and ii in the affirmative and point No.iii in the negative.

22. As a result of this I conclude that there is no substance in all appeals. The appeals are dismissed. The claimants are allowed to withdraw the amount of compensation with accrued interest. The amount of compensation be directly deposited in their respective accounts.

23. All appeals stands disposed of. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)

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