IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2108 OF 2018

HDFC ERGO General Insurance Co. Ltd.
Through its Manager,
Ramon House, H.T. Parikh Marg,
169, Backbay Reclamation,
Mumbai – 400 020.

Through the Authorized Signatory / Manager,
Division Office, Adalat Road,
Aurangabad. … Appellant
(Orig. Resp. No.2)

Versus

1. Vijaymala W/o. Munjaji Karhale,
Age: 34 years, Occu. : Household,
R/o. Kurhadi, Tq. Jintur, Dist. Parbhani.

2. Asaram S/o. Munjaji Karhale,
Age : 17 years, Occu. : Education,
Minior U/g. Real Mother i.e. Claimant no.1

3. Vikas S/o. Munjaji Karhale,
Age : 15 years, Occu. : Education,
Minior U/g. Real Mother i.e. Claimant No.1.

4. Gangaram S/o. Sakharam Dubhalkar,
Age : Major, Occu. : Business,
R/o. Borgilwadi, Tq. Jintur, Dist. Parbhani. … Respondents.

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. Mahesh P. Kale, Advocate for Respondents.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 07 AUGUST 2025
PRONOUNCED ON : 20 AUGUST 2025

JUDGMENT :

1. Original respondent no.2 Insurance Company is dissatisfied by the judgment and order passed by learned Chairman, M.A.C.T, Parbhani dated 20.04.2017 in M.A.C.P No. 443 of 2011 awarding compensation to the present respondents/original claimants.

FACTS GIVING RISE TO THE APPEAL ARE AS UNDER

2. Heirs of deceased Munjaji filed M.A.C.P. No. 443 of 2011 on the premise that deceased Munjaji was occupant of tractor bearing chassis No. 918113211178 on 27.01.2011. The driver of the tractor, namely Mahadu lost his control over the tractor, as a result of which deceased fell and suffered fatal injuries to which he ultimately succumbed. Crime was registered against driver of tractor and heirs of deceased set up a claim under section 166 of Motor Vehicles Act to the tune of Rs.6,36,000/-.

3. Present appellant – insurance company (original respondent no.2) contested the claim denying its liability on various grounds. The thrust and emphasize of present appellant is that, risk of deceased was not covered by them and therefore insurance company is not liable. After appreciating the respective cases by each of the side, learned tribunal was pleased to allow the petition granting compensation to the tune of Rs.4,80,000/- with further directions to original respondent no.1 to

exclusively pay the amount and present appellant insurance company was directed to first pay and then recover from original respondent no.1 by instituting proceedings.

Exception is taken to the above judgment and order by filing instant appeal.

SUM AND SUBSTANCE OF THE ARGUMENTS

4. Learned counsel for insurance company pointed out that, such order of pay and recover ought not to have been passed by tribunal. He pointed out that, deceased was not permitted to occupy the mudguard of the tractor. Insurance company had covered risk of only driver of the tractor. Therefore, the very order of even directing insurance company to pay and recover, is not sustainable. He seeks reliance on following rulings :

1. *New India Assurance Company Ltd. v. Diwakar s/o. Daulatrao Rohankar and others, 2005 (4) Mh.L.J. 773*

2. *United India Insurance Co. Ltd. v. Laila Ayyub Sayyad & Ors. 2017 STPL 1453 Bombay.*

5. In answer to above, learned counsel for respondents - original claimants submitted that, even the Hon'ble Apex Court in the case of *New India Insurance Company v. Darshana Devi & Ors.*, 2008 STPL 5268 SC had granted compensation. Therefore, he finds grant of compensation at the instance of respondent no.1 owner of the tractor and prays to dismiss the appeal.

6. After hearing the submissions advanced by both sides and on going through the papers, it appears that, crime is registered bearing No. 04 of 2011 for offence punishable under sections 279 and 304(A) of Indian Penal Code. Claimants had placed on record police papers comprising of FIR at Exh.34, spot panchanama at Exh.35 and charge-sheet at Exh.38. Claimants had adduced evidence of eye witness Balaji.

7. In view of FIR and post mortem report, there is no dispute that Munjaji was working as a labour and was occupying tractor along with driver. Question which is required to be addressed is whether person other than driver, is also covered under the policy. Insurance company in the trial court has examined its Legal Officer Satish Awachar at Exh.61 and has though admitted about tractor being insured with their company, he has deposed that, only driver of the tractor is covered and no other occupant is covered. Policy is also at Exh.62. In cross except admitting that third party is covered under the policy, rest all suggestions are denied.

8. However, in view of the law discussed by the Hon'ble Apex Court as well as this court in above referred cases, and more particularly, in view of nature of vehicle involved, nature of policy and only tractor driver being covered, risk of deceased was not covered. Therefore, when there is

no distinct or extra premium paid towards other person except the driver, liability on insurance cannot be fasted.

9. Leaned counsel for claimants has also taken recourse to the judgment of the Hon'ble Apex Court in the case of *New India Insurance Company v. Darshana Devi (Supra)*. However, therein Hon'ble Apex Court had exercised extraordinary jurisdiction under Article 142 of the Constitution of India. Therefore, even if compensation is granted in that case, same cannot be made applicable, more particularly, in view of the observations of the Hon'ble Apex Court in paragraph 21, this court finds substance in the arguments advanced by the learned counsel for insurance company.

10. In view of the settled position laid down by the Hon'ble Supreme Court, it is clear that, the Insurance Company is not statutorily required to ensure the passengers travelling in a goods vehicle and, as such, would not be liable to pay compensation. In the present case also admittedly the deceased was sitting on the mud guard of the tractor which is undoubtedly a goods carrier and in such circumstances the Insurance Company cannot be made liable to pay compensation to the respondents. In view of the decision of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. v. Bommithi Subbhavamma***, 2005 (2) T.A.C. 1 SC, the

insurance company is not liable to pay compensation first to claimants and then to get it recovered from the owner as it is the owner of the goods vehicle who alone is liable to pay compensation.

11. In view of the aforesaid settled position of law, the claimants are at liberty to recover the compensation from the owner of the tractor.

12. The appeal is allowed. No costs.

(ABHAY S. WAGHWASE, J.)

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