2025:BHC-AUG:21176

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 808 OF 2021
WITH
CIVIL APPLICATION NO.5267 OF 2021
WITH
CIVIL APPLICATION NO.11794 OF 2021

The New India Assurance Company Limited,
Through its Branch Manager,
Shivaji Chowk, Naik Niwas, Osmanabad,
Dist. Osmanabad.

Through Senior Divisional Manager/
In-charge Legal Hub,
Ajay Engineering Compound,
Near Kranti Chowk, Mahesh Compound,
Adalat Road, Aurangabad **... Appellant**
(Orig. Respondent No.2.)

Versus

1. Ganesh S/o. Shripati Gaikwad,
Age : 26 years, Occu. : Labour,
R/o. Girwali, Tq. Bhoom,
Dist. Osmanabad.

2. Ramhari S/o. Shripati Gaikwad,
Age : 28 years, Occu. : Labour,
R/o. As Above.

3. Reshma W/o. Vinayak Shendge,
Age : 25 years, Occu. : Education,
R/o. Sultanpur, Tq. & Dist. Beed.

4. Dhanraj Sambhaji Undre,
Age : Major, Occu. : Business,
R/o. Lonkhas, Tq. Wanhi,
Dist. Osmanabad.

5. Kamlakar Gorakh Borade,
Age : Major, Occu. : Business,
R/o. Pathrud, Tq. Bhoom,
Dist. Osmanabad. **... Respondents.**

(Respdt. Nos.1 to 3 Orig.
Claimants, Respdt. Nos.4 & 5 –
Orig. Respdt. Nos.1 & 3)

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Mr. Mohit R. Deshmukh, Advocate for Appellant.
Mr. V. S. Undre, Advocate for Respondent Nos.1 to 3.
Mr. K. R. Doke & Mr. S. K. Doke, Advocates for Respondent Nos.4 & 5

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 30 JULY 2025
PRONOUNCED ON : 08 AUGUST 2025

JUDGMENT :

1. This is an appeal at the instance of Insurance Company original respondent no.2 questioning the judgment and award dated 09.12.2020 passed by learned Motor Accident Claims Tribunal, Bhoom in M.A.C.P. No.253 of 2014.

2. Facts giving rise to the present appeal are that, respondent Nos.1 to 3 are original claimants, who had filed claim petition under section 166 of the Motor Vehicles Act, 1988, advancing a case that deceased Shamalbai was carrying saplings by walking on the side of the road proceeding from village Girwali. Tempo bearing No. MH-16-AE-7914 came in reverse direction without prior signal or intimation and gave dash to the deceased, who suffered fatal injuries and died on the spot. Claimants set up a case that, Shamalbai was earning livelihood by doing labour work and was maintaining her family i.e. claimants. On account of her untimely accidental death, they had lost source of income and

under various heads, they claimed compensation to the tune of Rs.8,00,000/- from respondents therein i.e. owner and driver of the tempo and its insurer.

After appreciating the respective cases advancing by each of the side, learned tribunal was pleased to hold that claimants have made out case regarding death of Shamalbai in road traffic accident dated 15.09.2014 on account of dash given by tempo and proved that there was rash and negligent driving on the part of tempo driver. However, learned tribunal dismissed the claim against original respondent no.3 i.e. previous owner of tempo and directed compensation to be paid jointly and severally by original respondent nos.1 and 2 i.e. owner of tempo and his insurer present appellant i.e. to the tune of Rs.6,30,120/- with interest @ 7% per annum.

3. Before this court there is serious contest on liability to pay compensation i.e. liability of insurance company to pay compensation jointly and severally with owner of the tempo.

4. Learned counsel for insurance company vehemently submitted that, there was no effective insurance policy in force at the time of accident so as to make insurance company liable. He pointed out that, original respondent no.3 had taken insurance

policy, but it was only for a period from 11.03.2014 to 10.03.2015. Premium was paid by way of cheque, but the cheque itself was dishonoured for want of sufficient funds, and therefore, no premium being received for the coverage, insurance policy came to be cancelled and intimation to that extent being given to original respondent no.3 along with R.T.O. authorities. Consequently, insurance company having not received premium, is not liable to provide cover or any insurance.

5. Above case is countered by owner of the tempo and his counsel would point out that, premium was paid in cash through agent. That, no intimation has been received regarding cancellation from insurance company by any mode. That, owner having paid premium and being equipped with the policy for the period including date of accident, insurance company to be liable to pay.

6. Before this court in appeal, learned counsel for appellant would submit that, before the tribunal the very Senior Branch Manager of insurance company has been examined at Exh.49. That, this witness has placed on record certificate of insurance Exh.61 and has testified that, cheque amount of Rs.22,007/- which was paid towards premium, was dishonoured.

Cheque (Exh.62) has been placed on record. Thus, according to him, policy stood cancelled for want of premium. He pointed out that, through R.P.A.D. intimation of cancellation of policy has been given to the owner apart from corresponding intimation to R.T.O. authorities. He pointed out that, photocopies of the postal slips by R.P.A.D. are also placed on record.

As stated above, receipt of intimation about cancellation of policy has been flatly denied by original respondent no.1 and further case set up is that premium for the coverage has been paid by cash through authorized agent namely Shri Anil Khose, and therefore, policy coverage has been obtained and so insurer is liable to compensate.

7. Attention of this court is invited to the evidence of Senior Branch Manager Shri Pathan as well as to the cross. For proper comprehension cross being relevant, is reproduced as under :-

"Cross-Examination by Advocate D.D. Nagargoje on Behalf of Non-Applicants No. 1 and 3

3. My educational qualification is a degree in the Science stream. The cheque mentioned in the examination-in-chief was received from Om Sai Krishi Seva Kendra, but I cannot state whose account it belonged to. The bank memo does not mention the account *number. It is not true that the insurance company issues policies only through an insurance agent. It is not true that I am falsely stating that the company informed the policyholder of the policy cancellation via registered post. It is not true that I am falsely stating that the acknowledgment receipt for the said letter/notice was sent by Respondent No. 2 to NXA company. It is not true that the insurance policy was in existence at the time of the accident.*

Cross-Examination by Advocate B.U. Mote on Behalf of the Applicant

4. It is true that the insurance company issues an insurance policy only after receiving the premium amount. It is true that the insurance company issued the insurance policy after receiving the premium cheque. I state that I will submit the acknowledgment receipt for the notice served to Respondent No. 3 if it becomes available. It is not true that I am falsely stating that the company sent a notice to Respondent No. 3 regarding the cancellation of the insurance policy and that it was received by Respondent No. 3. It is not true that the said policy was in existence during the period from 11.03.2014 to 10.03.2015. It is not true that I am giving false testimony."

(As translated by Senior Translator, High Court of Bombay Bench at Aurangabad)

8. Thus, what is emerging from above answers is that though insurance company claims to have received cheque, but it

is apparently in the name of one “Om Sai Krushi Seva Kendra”. There is no evidence to show nexus or connection of original respondent nos.1 and 3 with the said Om Sai Krushi Seva Kendra. Learned counsel for insurance company denies receipt of premium through Shri Anil Khose and attention of this court is invited to the policy wherein name of agent namely Sanjay Chapale is reflected. Though, there is difference in the name of agent, insurance company has not denied policy of the tempo for a period from 11.03.2014 to 10.03.2015. Further insurance company though claims to have cancelled the policy and issued intimation, its receipt by original respondent nos.1 and 3 has not been demonstrated. Mere copy of dispatch register is placed on record, but complete address of original respondent no.3 is not reflected thereupon. Even postal receipts in the form of acknowledgments are not placed on record so as to accept appellant’s contention about intimation being received by owner of the tempo. Unless intimation is shown to be received by the owner about cancellation, and, more particularly in the light of availability of policy and there being no denial of receipt of premium by cash mode, though not sure from which of the agent, insurance company in the considered opinion of this court, is liable to compensate.

9. No point being made out on merit to interfere in the

findings and conclusion drawn by learned tribunal, appeal is liable to be dismissed. Hence, the following order is passed :

ORDER

(i) The appeal stands dismissed.

(ii) In view of dismissal of the appeal itself, Civil Application No. 11794 of 2021 filed by the original claimants for withdrawal of amount is allowed in terms of prayer clause "A".

(iii) Civil Application No.5267 of 2021 also stands disposed off.

(ABHAY S. WAGHWASE, J.)

Tandale