IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1361 OF 2014
WITH
CIVIL APPLICATION NO.7297 OF 2014
WITH
CIVIL APPLICATION NO.8388 OF 2023

New India Assurance Company Ltd.,
Having its H.O. 87 New India Assurance Bldg.,
Fort, Mumbai – 400 001,
Branch Office at Ozzar Nashik and
Divisional Office at Ajay Engg. Compound,
Adalat Road, Aurangabad 431 005
Through its Senior Divisional Manager (Legal Hubb),
& Constituted Attorney. ... Appellant

Versus

1. Namdeo S/o. Tukaram Kale, }
Age : 79 years, Occu. : Agril., } Dismissed as against resp. no.1 as per Court's order dated 17.03.2023

2. Kesharbai W/o. Namdeo Kale,
Age : 77 years, Occu. : As above,

3. Kalpana W/o. Balu Kale,
Age : 34 years, Occu. : As above,

4. Eknath S/o. Namdeo Kale,
Age : 38 years, Occu. : As above,

5. Raosaheb S/o. Namdeo Kale,
Age : 39 years, Occu. : As above,

All are R/o. Takli Ambad, Tq. Paithan,
Dist. Aurangabad.

6. Sk. Rajjak Ahmed,
Age : Major, Occu. : Business,
R/o. Kasbe Sukene, Tq. Niphad,
Dist. Nashik.
Shantinagar, Bhilai Chatisghad. ... Respondents

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Mr. M. R. Deshmukh, Advocate for Appellant.
Mr. R. G. Hange, Advocate for Respondent Nos.2 to 5.
Mr. A. R. Syed h/f. Mr. Faij J. Khan, Advocate for Respondent No.6.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 18 DECEMBER 2025
PRONOUNCED ON : 22 DECEMBER 2025

JUDGMENT :

1. This appeal, at the instance of original respondent no.2 arises out of judgment and award dated 09.05.2014 passed by learned M.A.C.T. Beed, in M.A.C.P. No. 147 of 2005 awarding maintenance to the original claimants/respondent Nos.2 to 5 herein, on account of accidental death of Balu Namdeo Kale, who died in road traffic accident dated 03.01.2005.

2. In nutshell, present respondent nos.1 to 5, who are original claimants, instituted above M.A.C.P., on the premise that, deceased Balu, who was a labourer engaged in sugarcane cutting, was traveling in a truck bearing No. MH-15-G-2827, which was meant for transporting sugarcane labourers on behalf of sugar factory. On the said day, driver of the vehicle i.e. respondent no.1 was driving the vehicle in rash and negligent manner, as a result of which, the vehicle turned turtle causing fatal injuries to the deceased, due to which, he died. Therefore, invoking section 163-A of the Motor

Vehicles Act, heirs of deceased Balu set up accident claim for compensation, which was contested by present appellant i.e. original respondent no.2. Ultimately, learned tribunal allowed the claim petition directing compensation to the tune of Rs.4,00,000/- to be paid by original respondent no.1 with interest. However, there were further directions by order dated 09.05.2014 that, present appellant (original respondent no.2 insurance company) to satisfy the award and then recover it from respondent no.1.

Dissatisfied by the above order of 'pay and recover', insurance company has come up in appeal.

3. Heard. Learned counsel for insurance company Shri Deshmukh would raise fundamental objection to the grant of compensation. According to him, the vehicle being goods vehicle, deceased being gratuitous passenger, he was not entitled to travel therein and no extra premium being paid, the insurance company was not liable. It is his submission that, when learned tribunal had clearly recorded a finding that insurance company succeeded in proving that there was breach of policy and not liable to pay, learned tribunal ought not to have even directed insurance company to first pay and then recover later. It is also his submission that, though precedents laid down by the Hon'ble Supreme Court are regarding pay and recover, it is his specific submission that, this has been done

by the Hon'ble Apex court in exercise of Article 142 of the Constitution of India, and therefore, it is not open for this court to direct pay and recover.

In support of above contentions, learned counsel seeks reliance on the judgments of this court in First Appeal No.1502 of 2018, decided on 07.02.2024 in the case of ***New India Assurance Company Ltd. v. Manoj Gangaram Narwade and Ors.***; in First Appeal No. 1401 of 2004 with connected First Appeal Nos. 1403 of 2004 and 1406 of 2004, decided on 21.02.2024 in the case of ***The New India Assurance Company Ltd. v. Nagesh s/o. Niloba Deshmukh*** as well as in First Appeal No. 1804 of 2018 decided on 22.10.2019 in the case of ***Shriram General Insurance Company Ltd. v. Laxman Manik Jadhav and Ors.*** and ***New India Assurance Co. Ltd. v. Asha Rani and Ors.,*** (2001) 6 SCC 724.

4. In answer to above submission, learned counsel Shri Hange for respondents/Orig. claimants would point out that, in this case, though deceased was declared to be a gratuitous passenger, he justifies order of grant of pay and recover and in support of such contention, he seeks reliance on the judgments of this court in the case of ***Shivaraj v. Rajendra and Anr.,*** (2019) 4 Mh.L.J. 16.; ***Manuara Khatun and Ors. v. Rajesh Kumar Singh and Ors.*** (2017) 4 SCC 796; ***New India Assurance Co. Ltd. v. Bhagubai w/o. Tukaram***

Margal and Ors. in First Appeal No. 479 of 2015; ***Brij Bihari Gupta v. Manmet & Ors.,*** in Civil Appeal Nos.6338-6339 of 2024 (Supreme Court); ***Sunita and Ors. v. United Insurance Company Ltd. and ors***.; AIR Online 2025 SC 601; and lastly ***Kurvan Ansari alias Kurvan Ali and Anr. v. Shyam Kishore Murmu & Anr.*** in Civil Appeal No.6902 of 2024 (Supreme Court).

5. The only question which this court is called upon to address is whether, when the insurance company is not liable to indemnify the claim of a gratuitous passenger for traveling in a goods vehicle, an order of "Pay and Recover" can at all be passed.

6. Heard. Perused the papers. M.A.C.P. No.147 of 2005 was instituted by present respondent by invoking section 163-A of M.V. Act seeking compensation to the tune of Rs.4,00,000/-. Present appellant, who was original respondent no.2 before the tribunal, vide written statement at Exh.11 denied rashness or negligence and also took the plea that driver did not have effective and valid driving licence. The primary objection raised was that, the vehicle was driven in breach of the terms and conditions of policy as it was a goods vehicle, in which the travel or journey by persons was not permitted and hence, case was set up that liability cannot be fastened.

7. After appreciating the respective cases of each side, learned tribunal on the strength of evidence of CW1, documentary evidence like FIR, accidental death report, spot panchanama and post mortem report, recorded a finding that, there was ample evidence to show that accident occurred due to rash and negligent driving of offending vehicle, and thereby answered issue no.1 in affirmative.

8. As regards to issue no.2, which was framed on the plea raised by insurance company, learned tribunal discussed and held in paragraph no.9 that deceased was traveling in a goods vehicle and therefore, he was held to be a gratuitous passenger and noting there to be breach of policy, learned tribunal answered the issue no.2 partly affirmative and partly negative by holding that original respondent no.2 had succeeded in proving that there was breach of policy and not liable to pay. Ultimately, while deciding the question as to who shall pay the compensation, learned tribunal make discussion in paragraph 11 wherein certain rulings were relied on and it was clearly observed that, though original respondent no.2 was not liable to pay compensation, but directions were thought fit to be given to the insurance company to first satisfy the award and then recover it from original respondent no.1. Precisely, this is now taken exception to by insurance company.

9. Indeed, there are judgments on both sides holding that insurance company should pay first and then recover, and equally there are also judgments holding that claim of gratuitous passenger, who meets road traffic accident while traveling in a goods vehicle, is not entitled to receive compensation, and as such, insurance company cannot be made to even pay first and then recover later.

10. This court has perused all the rulings and judgments relied by appellate court. In the rulings relied by learned counsel Shri Hange for respondents/original claimants, i.e. ***Sunita and Ors.*** (supra) decided recently by the Hon'ble Apex Court, its own previous judicial pronouncements in the case of ***Mukund Dewangan v. Oriental Insurance Company Ltd. & Others,*** (2017) 14 SCC 663; ***Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi,*** (2024) 1 SCC 818; ***National Insurance Co. Ltd. v. Baljit Kaur,*** (2004) 2 SCC 1, and ***Anu Bhanvara v. IFFCO Tokio General Insurance Co. Ltd.,*** (2020) 20 SCC 632; upheld the High Court's order, holding that although insurer was technically not liable under the terms of policy, justice and precedent demanded application for 'pay and recover'. Similar view is again taken very recently by the Hon'ble Apex Court in the case of ***K. Nagendra v. New India Insurance Co. Ltd. And Ors***, *2025 SCC OnLine SC 2297,* in paragraph 9 and 10 observed as under :

"9. The purpose of an insurance policy in the present context is to shield the owner/operator from direct liability when such an unforeseen/unfortunate incident takes place. To deny the victim/dependents of the victim compensation simply because the accident took place outside the bounds of the permit and, therefore, is outside the purview of the insurance policy, would be offensive to the sense of justice, for the accident itself is for no fault of his. Then, the Insurance Company most certainly ought to pay.

10. At the same time though, when an Insurance Company takes on a policy and accepts payments of premium in pursuance thereto, it agrees to do so within certain bounds. The contract lays down the four corners within which such an insurance policy would operate. If that is the case, to expect the insurer to pay compensation to a third party, which is clearly outside the bounds of the said agreement would be unfair. Balancing the need for payment of compensation to the victim vis-à-vis the interests of the insurer, ***the order of the High Court applying the pay and recover principle, in our considered view, is entirely justified and requires no interference.****" (emphasis laid)*

11. The above observations answer's also the submission raised by the learned counsel for insurance company that the orders of Hon'ble Apex court were in exercise under Article 142 and the same is not permissible for this court. In order to render justice and to meet the objectives of 'benevolent legislation' and also to further 'grant immediate reprieve' to the victims, order of "Pay and Recover" passed by learned tribunal, is justified and is consequently required

to be upheld. Hence, the following order is passed :

ORDER

(i) First Appeal is dismissed.

(ii) Pending Civil Application No.7297 of 2014 is disposed off.

(iii) Civil Application No.8388 of 2023 filed by the original claimants for withdrawal of amount is allowed and disposed off. Respondents/original claimants are permitted to withdraw amount lying in the tribunal/this court subject to furnishing usual undertaking, if any.

(ABHAY S. WAGHWASE, J.)

Tandale