IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 2567 OF 2016
WITH
CIVIL APPLICATION NO.9665 OF 2016

The New India Assurance Co. Ltd.
Through its In-charge (Legal Hub),
D.O. No. I, Adalat Road, Aurangabad,
Ravikant Yadav, Age :__ years,
Occu. : Service, R/o. Aurangabad. … Appellant
(Orig. Respondent No.2.)

Versus

1. Smt. Anita W/o. Sumant Shinde,
Age : 26 years, Occu. : Household,

2. Ramprasad S/o. Sumant Shinde,
Age : 09 years, Occu. : Minor,

3. Rohit S/o. Sumant Shinde,
Age : 06 years, Occu : Minor,

4. Samarth S/o. Sumant Shinde,
Age : 16 years, Occu : Minor,
Nos.2 to 4 are minors and U/g of their
Real Mother respondent No.1
Smt. Anita W/o. Sumant Shinde,

5. Sow. Shantabai W/o. Vrashchik Shinde,
Age : 56 years, Occu. : Household,

6. Vrashchik S/o. Annabhau Shinde,
Age : 58 years, Occu. : Nil,
Nos. 1 to 6 All R/o. Parbhani (Kesapuri),
Tq. Dist. Beed.

7. Suresh S/o. Dinkar Lokhande,
Age : 49 years, Occu. : Business,
Owner of Truck No. MH-12-AQ-1728,
R/o. Katphal, Tq. Baramati, Dist. Pune. … Respondents
(R-1 to 6 Orig. Claimants)
(R-7 Orig. R-1)

......

Mr. S. R. Bodade, Advocate for Appellant.
Mr. R. D. Sanap, Advocate for Respondent Nos.1, 5 & 6. (Respondent Nos.1 to 4 Minor)
Mr. H. D. Deshmukh, Advocate for Respondent No.7.

......

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 11 DECEMBER 2025
PRONOUNCED ON : 12 DECEMBER 2025

JUDGMENT :

1. This is an insurance appeal, whereby exception is taken to the judgment and award dated 01.02.2016 passed by Motor Accident Claims Tribunal, Beed in M.A.C.P. No.167/2010, by which claim of present respondent Nos.1 to 6 came to be allowed directing owner of the truck as well as insurance company to jointly and severally pay compensation to the tune of Rs.8,18,600/- with interest at the rate of 8% per annum.

2. Claim petition was set up by present respondent Nos.1 to 6, who are heirs of Sumant Shinde, who was allegedly traveling in a truck bearing No. MH-12-AQ-1728 on 06.04.2009 and allegedly fell from the truck, suffered head injury and died. Therefore, his heirs set up compensation claim by invoking section 166 of Motor Vehicles Act. Owner of the truck and its insurer (present appellant) were arraigned as respondents and they both contested the claim. Amongst other grounds,

insurance company - original respondent no.2 resisted the claim by questioning the very involvement of vehicle as deceased himself had allegedly fallen from a moving truck. Second ground of challenge was the breach of policy on account of no valid and effective driving licence. Claim came to be allowed as stated above.

Feeling aggrieved by the above, insurance company has come up in appeal.

3. Learned counsel for appellant would submit that, deceased Sumant Shinde fell from the truck on his own accord and fault or negligence of the insurance company was not proved. Specific ground is taken that, deceased was traveling as a passenger that to in a goods vehicle and had suffered injury and as there was no coverage of deceased in any capacity, claim ought not to have been allowed. According to him, involvement of vehicle is coming from first time in supplementary statement. There is no evidence about truck driver driving in rash and negligent manner or in a zigzag manner, so as to attribute fault to the truck driver. According to him, wife of deceased was not an eye witness, and as such, her testimony ought not to have been accepted. He emphasized that, admittedly, alleged truck was goods vehicle and except goods nothing was permitted to be transported. That, here, deceased was traveling unauthorisedly, and therefore, in view of the decision of the

Hon'ble Apex Court in the case of ***New India Assurance Co. Ltd v. Asha Rani and Ors.,*** *AIR 2003 SC 607* as well as in the case of ***Oriental Insurance Company Ltd. v. Devireddy Konda Reddy and Ors.***, *AIR 2003 SC 1009*, learned counsel urges to allow the appeal.

4. Above submissions are countered by learned counsel for respondents/original claimant and according to him, apparently truck driver was negligent. Learned trial court had given reasoned order and so he prays to dismiss the appeal for want of merits.

5. The only point for consideration here is whether insurance company - original respondent no.2 is liable to pay compensation jointly and severally along with owner of the truck when it was purely a goods vehicle.

6. Re-appreciated the evidence i.e. both oral and documentary evidence. Admittedly, as pointed out, deceased was traveling in a truck bearing MH-12-AQ-1728. Before tribunal there was contest as to whether there was negligence on the part of truck driver or deceased himself was negligent and had fallen down. Papers like AD inquiry and FIR show that, crime is registered against truck driver. Tribunal seems to have accepted the claimant's case holding truck driver responsible and holding

that insurance company failed to prove its statutory defence for want of valid and effective driving licence, learned tribunal proceeded to allow compensation directing both, owner of the truck as well as its insurer - present appellant, to jointly and severally pay the compensation.

7. Learned counsel for appellant placed on record above referred judgments. Apart from above judgment, the Hon'ble Apex Court in the case of ***Oriental Insurance Co. Ltd. v. Premlata Shukla and Ors.,*** [2007 AIR SCW 3591] as well as in the case of ***National Insurance Co. Ltd. v. Baljeet Kaur and Ors.*** [(2004) 2 SCC 1] has opined that, insurance company is not liable to pay the risk of unauthorized passengers in a goods vehicle or gratuitous passenger, who are not covered under the policy and rather it is viewed as breach of policy.

Therefore, in the light of above law, when deceased Sumant Shinde was unauthorisedly traveling in a goods vehicle, and he having suffered death on account of fall from the same and there being no policy covered for him, insurance company is not liable. However, the purpose of justice would be subserved by directing the insurance company to pay and recovered from the owner. Hence, the following order is passed :

ORDER

(i) The First Appeal is allowed.

(ii) Impugned judgment and award dated 01.02.2016 passed by learned Motor Accident Claims Tribunal, Beed in M.A.C.P. No. 167 of 2010 stands modified.

(iii) It is held that, appellant insurance company could not be held liable to pay compensation and the same is exonerated from the liability. However, insurance company is directed to first pay of compensation to original claimants and then is entitled to recover the same from original respondent no.1 as per law.

(iv) Original claimants are permitted to withdraw remaining amount, if any.

(v) Modified award be prepared accordingly.

(vi) Rest of the judgment and award shall remain intact.

(vii) The First Appeal is disposed of in above terms.

(viii) Pending Civil Application No. 9665 of 2016 is disposed off.

(ABHAY S. WAGHWASE, J.)

Tandale