IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.311 OF 2014

The New India Assurance Co. Ltd.,
Through its Branch Manager,
Yashodeep Building, Shivaji Road,
Parbhani,
Through its Authorised Signatory,
Sr. Div. Manager, Legal Hub,
Aurangabad, D.O. Aurangabad ..Appellant

vs.

1. Shruti d/o. Anilrao Kulkarni,
   Age : 23 years, Occ. Education,

2. Shrawani d/o. Anilrao Kulkarni,
   Age : 18 years, Occ. Education,

3. Padmabai w/o. Abasaheb Kulkarni,
   Age : 58 Years, Occ. Household,

   All r/o. Selu, Tq. and Dist. Parbhani (Orig. Claimants)

4. Anjali d/o. Rajabhau Wadhi (Kulkarni),
   Age : 43 years, Occ. Business,
   r/o. Parikh Colony, Selu,
   Tq. Selu, Dist. Parbhani

5. Maroti s/o. Dhondiba Patharkar (died),
   Through His L.Rs.
   Dhondiba s/o. Haribhau Patharkar, ..Respondents
   Age : 53 Years, Occ. Nil, (Orig. claimants &
   R/o. Gogalgaon, Tq. Selu, Resp. Nos.1 and 3)
   Dist. Parbhani

Mr. Dhananjay P. Deshpande, Advocate for appellant
Mr.S.S.Chapalgaonkar, Advocate for respondent nos.1 to 3
Mr.Ravibhushan Adgaonkar, Advocate for respondent no.4
Mr.P.C.Mayure, Advocate for respondent no.5

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : OCTOBER 15, 2025
PRONOUNCED ON : OCTOBER 17, 2025

JUDGMENT :-

Feeling aggrieved by the judgment and award dated 18.04.2012, passed by learned Chairman, Motor Accident Claims Tribunal, Parbhani, in Motor Accident Claim Petition No.371 of 2009, respondent no.2 – Insurance company has preferred this appeal.

2. For the sake of convenience, the parties are referred to their "factual status".

Facts in brief:-

3. One Anil Abasaheb Kulkarni while driving Jeep No.MH-22-B-7236 owned by his wife, i.e. present respondent no.4, met with an accident with another Jeep No.MH-30-A-6615. This is occurred on 27.09.2005 on Sailu-Parbhani road. Anil succumbed to the accidental injuries. An offence of accident was registered against the driver of other Jeep. The daughters as well as the mother of Anil Kulkarni filed present claim against the wife of Anil Kulkarni (mother of claimant nos.1 and 2 and daughter-in-law of claimant no.3), the insurer of the

Jeep and owner of the offending Jeep. Neither the owners of both the Jeeps caused their appearance in the learned Tribunal. However, the appellant – Insurance Company defended the claim on law as well as on facts. The appellant – Insurance Company specifically pleaded that the Jeep driven by deceased Anil was insured under “Act Only/Statutory/Third Party Policy” only. That, the risk of the gratuitous driver was not covered nor the driver of such vehicle fall within the category of “Third Party”. The appellant – Insurance Company also raised other grounds.

4. Learned Tribunal framed issues at Exh.43. However, without recording any evidence and misinterpreting a verbal statement made by learned counsel for the Insurance company, learned Tribunal allowed the claim petition, directing the appellant – Insurance Company to pay Rs.Two Lakhs to the claimants. It is against the impugned judgment and award, present appeal is filed by the appellant – Insurance Company.

5. By consent of the parties, I have heard the matter finally and have gone through the Record and Proceedings of the case with the able assistance of the respective counsels.

Appellant's argument:-

6. Mr.D.P.Deshpande, learned counsel for the appellant – Insurance Company, would submit that it was apparently the case of a private vehicle insured under the "act-only" policy. That, it is trite law that a driver in the private vehicle cannot be termed as Third Party. He would specifically submit that learned Member of the Motor Accident Claims Tribunal has mistakenly recorded that "learned counsel for the Insurance Company submitted that the insurer has no objection if compensation is awarded for Rs.2 Lakhs". He would submit that taking into consideration the defence pleaded by the Insurer in the written statement as also the policy on record there is no reason as to why learned counsel for the Insurer would make such statement. Mr.Deshpande, learned counsel, would submit that even learned counsel for the Insurance Company in the trial namely, Mr.B.N.Joshi, has filed an affidavit before this Court denying that he ever made a statement before learned Tribunal that the risk of the deceased – Anil was covered by the policy. He would submit that the affidavit clearly states that he has never given any "no objection" to grant the award of Rs.Two Lakhs.

7. Mr.Deshpande, learned counsel for the Insurance Company, would further submit that this is a clear case of legal defence where irrespective of quantum of compensation, the Insurer has denied its liability to indemnify the owner. He would add that if at all learned Tribunal had to hold the Insurer responsible to indemnify the owner it was incumbent on the part of learned Tribunal to discuss the insurance policy and the defence raised by the Insurer. To conclude, learned counsel would submit that the Insurer ought to have been given proper opportunity of hearing and explain the concerned insurance policy. He would lastly submit that it is not the quantum of compensation but principle of law, which has to be adhered.

Respondents' argument:-

8. Mr.Shailesh Chapalgaonkar, learned counsel for respondent nos.1 to 3, would submit that the claimants had no role while learned Member of the Tribunal proceeded to dispose of the claim petition. Mr.Chapalgaonkar, learned counsel, would graciously add that in any case, the legal position would prevail in all cases and in all contingencies. Lastly, he has prayed to pass appropriate order in the appeal.

Mr.Ravibhushan Adgaonkar, learned counsel for respondent no.4 and Mr.P.C.Mayure, learned counsel for respondent no.5, adopt the argument of Mr.Chapalgaonkar, learned counsel.

9. Considered the arguments advanced by the parties, I frame following points for my consideration:-

(i)	Whether learned Member of the Tribunal is justified in passing the award recording the statement of learned counsel for the Insurance Company ?	No
(ii)	What order ?	As per the final order

Discussion:-

10. It is trite law that a gratuitous driver in a private vehicle cannot be termed as Third Party. The "act only" policy does not cover any risk of a gratuitous driver. Although there was personal accident risk cover for Rs.2 Lakhs by the policy, it apparently covers the risk of the owner while driving himself/herself the insured vehicle. The parties have demonstrated the admitted contents of the insurance policy wherein the risk of a paid driver under Workmen's Compensation Act, 1923, is also covered.

11. The third party claims under the Motor Vehicles Act are governed by the Law of Torts. In such claim, the driver is the first wrongdoer having direct/absolute liability. The liability of the owner is called as vicarious liability. The liability of insurer is always by way of contract of insurance. As such, a claim by the dependents of the deceased driver against owner of the vehicle, which the deceased was driving is not maintainable. This is so, because a person can never be both, i.e. compensator and recipient/beneficiary at the same time.

12. Undisputedly, deceased Anil Kulkarni was not a paid driver engaged by his wife (owner of Jeep), i.e. present respondent no.4. The deceased Anil was admittedly serving in State Bank of India, at Sailu. By any stretch of imagination he could not be held as paid driver on the jeep owned by his own wife. The risk of Rs.2,00,000/- under the personal accident special contract was obviously of only owner who could be a driver in the event of any accident. Such is not the present case. Neither deceased Anil was owner of the Jeep nor was a paid driver on the Jeep.

13 Under these circumstances, it is not only surprising but definitely disturbing that learned Member of the Tribunal instead of calling the parties to lead evidence, discuss the contents, scope and

limitation of the insurance policy and particularly, applying judicious mind in the light of the basic principles of law, has hastily allowed the claim petition. The more disturbing part is that the reason to pass the impugned order has been recorded by learned Member "some verbal statement from the mouth of learned counsel for the insurer". It is expected that learned Member of the Tribunal must apply his judicious mind adhering to the procedure of trial and to give due regard to the basic principles of law at least.

14. The approach of learned Member of the Tribunal is seriously disapproved by this Court. So also, the reasoning rendered by the learned Member of the Tribunal are not at all justifiable. As such, the judgment and award in appeal is not at all sustainable. It is informed by learned counsel for the claimants that the amount deposited by the insurance company is withdrawn by them.

15. Giving paramount consideration to the procedure of law to be followed and also the principles of natural justice, I deem it appropriate to remand the matter back to learned Tribunal to decide the issue of liability *inter se* the insurer and the insured owner in the light of the nature of policy, the status of the deceased and the law that a gratuitous driver cannot be termed as Third Party.

16 In view of the above, I pass the following order:-

(i) The appeal stands allowed.

(ii) The impugned judgment and award dated 18.04.2012, passed by learned Chairman, Motor Accident Claims Tribunal, Parbhani, in M.A.C.P. No.371 of 2009 is quashed and set aside.

(iii) The matter is remanded back to the Motor Accident Clams Tribunal, Parbhani, for adjudication in the light of the observations made at paragraph 15 above.

(iv) Record and Proceedings be immediately sent to the M.A.C.T., Parbhani. Learned Tribunal shall dispose of the trial within six months from the date of receipt of the Record and Proceedings.

(v) Withdrawal if any, of the amount of compensation made by the claimants shall be subject to the decision in the remanded trial.

(vi) No order as to costs.

[AJIT B. KADETHANKAR, J.]

KBP