2025:BHC-AUG:14190

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

FIRST APPEAL NO.3547 OF 2017

National Insurance Co. Ltd
Through it's Divisional Manager,
Aurangabad Divisional Office,
Hazari Chembers, Station Road, … Appellant
Aurangabad (Orig. Opp No.2)

Versus

1. Archana w/o. Mahadev Nitnaware
   Age : 28 years, Occu : Household

2. Kiran s/o Mahadev Nitnaware
   Age 7 years, occu : Education
   Through N/G mother Res. No.1

3. Ratnamala w/o. Shivaji Nitnaware
   Age ; 50 years, occu : Household

   Res. No. 1 to 3 R/o. Mahan, Tal. Mahan,
   Dist. Akola at Present R/o. Asmat Road,
   at : Parbhani, Dist. Parbhani

4. Wilson Prataprao Mujmule
   Age : 43 years, Occu : business
   R/o. At : Malegaon, Tal. Malegaon,
   Dist. Washim (Owner of M/cycle No.
   MH-37-4738)

5. Rishwat Urban Co-operative Credit Society Ltd.,
   Risod, Branch AT Malegaon, Dist. Washim ... Defendants

…..

Shri. Atul B. Gatne, Advocate for the Appellant
Shri. Pavankumar S. Agrawal, Advocate for Respondent Nos.1 to 4

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CORAM : NEERAJ P. DHOTE, J.
RESERVED ON : 16.04.2025
PRONOUNCED ON : 09.05.2025

JUDGMENT :-

. This is an Appeal under Section 173 of the Motor Vehicles Act, 1988 (for short, 'M.V. Act') filed by the Insurance Company against the Judgment and Award dated 19.07.2011 passed by the learned Motor Accident Claims Tribunal, Parbhani (in short, 'the learned Tribunal') in Motor Accident Claim Petition No.270/2004, partly allowing the Claim Petition filed by Respondent Nos.1 to 3 (hereinafter referred to as the 'Claimants') under Section 163A of the M.V. Act.

2. The facts, in brief, giving rise to the present Appeal are as under:

2.1. The Claimants filed the above referred Claim Petition contending that, they were the Widow, Son and the Mother, respectively of Mahadev Shivaji Nitnaware (hereinafter referred to as the 'Deceased'), R/o. Mahan, Tal. Mahan, Dist. Akola. The Deceased was working as a Mechanic at one establishment and earning Rs.3,000/- Per Month. On 13.02.2004 Deceased was deputed by the Owner of Motorcycle No.MH37-4738 (hereinafter referred to as the 'Motorcycle;) to bring account from one person and accordingly when Deceased was driving the Motorcycle on Akola – Washim road and reached near Jaldhara Hotel, one buffalo came in front of the Motorcycle and the accident took place as Deceased lost his control. The accident was reported to the concerned Police Station and Crime No.20/2004 came to be registered under Sections 279, 304-A of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') against the Deceased. The Police conducted the investigation. The said Motorcycle was insured with the Appellant / Insurance Company at the time of the accident and therefore, the Motorcycle Owner and Insurance Company were jointly and severally liable to pay the compensation of Rs.4,17,500/- (Rs. Four Lakh Seventeen Thousand Five Hundred).

2.2. The Claim Petition was contested by the Insurance Company by filing Written-statement below Exh.13. They denied the contentions of the Claimants and liability to pay the compensation. The said Motorcycle was not validly covered by the Insurance Policy. No risk on the part of the Insurer commences, unless the premium is paid in full in advance by the insured. It was submitted that the Claim Petition be dismissed.

2.3. Respondent No.3 to the Claim Petition, which was the Credit Co-operative Society which advanced the loan to the Owner of the Motorcycle for purchasing the said Motorcycle, filed the Written-statement below Exh.53. They denied the Claim Petition. They contended that, though it was the responsibility of the Vehicle Owner to remove the Insurance Policy of the vehicle, as a good gesture by the Credit Co-operative Society removed the Insurance Policy for 18 vehicles including the Motorcycle involved in the said accident and issued a Cheque to the Agent of the Insurance Company on 09.02.2004 and asked him to remove the Insurance Policy. They denied their responsibility to pay the compensation.

2.4. The learned Tribunal framed the Issues below Exh.18 as follows:

> *"1. Do the petitioners prove that the deceased Mahadev Shivaji Nitnaware died in vehicular accident?*
> *2. Whether the risk of vehicle and driver is covered under the policy ?*
> *3. Whether the petitioners are entitled for compensation. If yes, to what extent and from whom ?*
> *4. Whether petitioners reside within jurisdiction of this Tribunal and their claim for compensation is tenable ?*
> *5. Whether respondent No.3 is liable for compensation claimed by petitioners ?"*

2.5. The Widow of Deceased examined herself as the Witness No.1 in support of the Claim Petition. The Police Papers pertaining to the Investigation and copy of Insurance Policy of the said Motorcycle were brought on record in her evidence. The Claimants examined Witness No.2, who was working as the Manager where Deceased was working, to prove the monthly income of Deceased and brought on record the Certificate showing the salary of Deceased.

2.6. The Appellant – Insurance Company examined their Administrative Officer below Exh.63 in support of their contention that the said Motorcycle was not covered by the Policy below Exh.65. The relevant documents were brought on record in his evidence.

2.7. The Credit Cooperative Society i.e. Respondent No.3, in the Claim Petition examined the Agent of the Appellant – Insurance Company below Exh.71 in support of their contention that Cheque towards the premium of Insurance Policy was given to the Agent. They further examined Witness No.2, who was working as the Manager in one of their Branch in support of their contentions. Necessary documents were brought on record in his evidence.

2.8. On hearing both the sides and appreciating the evidence available on record, the learned Tribunal passed the impugned Judgment and Award.

3. Heard both the sides.

4. One of the contention advanced by the learned Advocate for the Appellant is that the motor vehicular accident took place on 13.02.2004 and the insurance cover of the motorcycle which met with an accident was insured from 14.02.2004 and it did not cover the date of accident. Therefore, the Insurance Company was not liable to indemnify. To this, it is the contention of the learned Advocate for the Claimants that the Cheque towards insurance for the said Motorcycle was issued by the concerned Cooperative Credit Society on 9.2.2004 and

mere issuance of the Insurance Policy from 14.02.2004, will not make the insurance effective from 14.2.2004. It was not a fresh insurance proposal. It was a renewal proposal of the Insurance Policy. The Motorcycle was not inspected by the Appellant – Insurance Company and this itself shows that the insurance cover continued and it was renewed by the Appellant – Insurance Company. There was difference in the handwriting mentioned in the proposal date and commencement date of the policy.

5. In **J. Kalaivani and Others vs. K. Sivashankar and another (2007) 7 SCC 792**, cited by the learned Advocate for the Appellant was the Appeal arising out of decision in the Claim Petition under the M. V. Act for compensation. The Insurance Company therein disowned the liability on the premise that, at the time of the accident, there was no policy of Insurance covering the vehicle concerned as the Insurance Policy which was issued on 08.02.1995 was to expire in the midnight of 07.02.1996. The accident took place at 04:30 a.m. on 8.02.1996 which was four and a half hours after the expiry of the erstwhile policy. On the succeeding day, the Owner of the vehicle went to the Insurance Company and got another insurance policy issued in respect of the same vehicle, in which the Insurance Company had specifically indicated the time of commencement of policy after 10 a.m. on 8.2.1996.' By considering the earlier decisions it was observed that, '*the Court has to*

look into the contract of insurance to discern whether any particular time has been specified for commencement or expiry, as the case may be, of the policy of Insurance'. In the facts of the said case, it was observed that '*the Insurance Company cannot be held liable in respect of the Award granted by the Tribunal*'.

6. In **Cholamandalam MS Insurance Co. Ltd vs. Narendra Vijayprakash Shukla & Others** in **First Appeal (St.) No.8126 of 2024,** cited by the learned Advocate for the Claimants, decided by the Single Bench of this Court at the Principal Seat by Judgment and Order dated 03.09.2024, it was observed that

> '*in the three Judgments relied upon by the learned Advocate for the Claimant the Courts have consistently held that when the premium amount is collected at early stage and if the policy was issued subsequently and if the accident occurs in between these two dates, the Insurance Company cannot be exonerated.*'

7. In **Laxman Vithu Majik and Ors vs. Anant Suryakant Wadkar and Ors, MANU/MH/1333/2017,** cited by the learned Advocate for the Claimants, decided by the Bombay High Court at Goa Bench was the Appeal for compensation under the M.V. Act and one of the issue involved therein was '*Whether learned Tribunal was in error to hold that there was no valid insurance on the date of the accident and to absolve Respondent No.4 therein finally of the liability to indemnify the registered owner*'. While considering the explanation to Section 64-VB of the Insurance Act, 1938, the Court observed that, '*from reading of the*

said Section it was apparent that the payment of the premium was also contemplated by Cheque and policy would begin to run no sooner such document is received.' It was observed that *'Respondent No.4 therein had suppressed the receipt of premium on 14.06.2006 would not leave it open to the insurer to canvass that the Appellant had not challenged the order'.* It is further observed that, *'considering thus the effect of the policy qua the lack of the consent of the insured to make the policy effective from the future date and the Appellant having shown that the insured had effected the payment on 14.06.2006 at 12:04 hrs i.e. much prior to the accident at 20.45 hrs.,'* and it was observed that, *'the learned Tribunal was in error to discharge Respondent No.4 from the proceedings'.*

8. Coming to the case at hand, the evidence of Witness No.1 examined by the Appellant show that he was working as Administrative Officer with the Jalna Branch of the Appellant. According to him, the proposal in respect of the said Motorcycle was received in their office on 16.02.2004. The first insurance was not with the Appellant – Insurance Company. The Credit Co-operative Society requested them to issue Insurance Certificate w.e.f. 14.02.2004 and accordingly the insurance cover was effected by the Appellant from 14.2.2004. According to him, the Cheque of premium was received on 16.2.2004 along with proposal form at Exh.64 from the Credit Cooperative Society. The Insurance

Policy was brought on record at Exh.65. His cross-examination shows that, Exh.65 was the comprehensive policy. He accepted that the insurance cover note and certificate of insurance are two different documents and further accepted that, the cover note can be issued by Agent of the Insurance Company. He accepted that the Agents are appointed by the Insurance Company in various villages. It has come in his evidence that the policy of the Motorcycle was issued at the instance of their agent Shri. S. K. Ladda i.e. Witness No.1, examined by Credit Co-operative Society. He accepted that the amount of premium is deposited by the Agent with the Insurance Company. He accepted that the policy was issued after verifying the existence and availability of the vehicle, genuineness of the documents, engine and chasis number etc. He accepted that the insurance proposal in respect of other vehicles was also received from the Credit Co-operative Society and the premium in respect of several vehicles was received by one Cheque. It has further come in his evidence that Mr. Ladda, who was the Agent of their Company, accepts the Cheque on behalf of the Company from the customers. He stated of his ignorance as to whether Mr. Ladda accepted the Cheque from the bank on 9.2.2004. Suggestions were given in the cross-examination that, the proposal was received without particulars i.e. spaces were blank, and subsequently spaces were filled by the Insurance Company so as to avoid the liability of the accident, it was deposed false that the Cheque was received on 16.02.2004.

9. The Credit Co-operative Society examined Shivprasad Kachrulal Ladda (S. K. Ladda) as Witness No.1. His evidence shows that on 09.02.2004, he was acting as the Agent of the Appellant and he knew the Credit Cooperative Society. It has come in his evidence that he used to purchase Insurance Policies for the vehicles purchased with the financial assistance of Credit Cooperative Society and insurance of vehicle involved in the accident was removed by him. It has further come in his evidence that he had purchased the insurance policies for 18 vehicles collectively which included the vehicle involved in the accident. It has come in his further evidence that, he received the Cheque for purchasing the policies on 09.02.2004 and the Cheque at Exh.57 was brought on record in his evidence after it was shown to him and he identified the same. It has further come in his evidence that, the Cheque was drawn on the account of Society and he issued acknowledgment on the counter of the Cheque. He further deposed that, he was not asked to purchase the insurance policies with effect from 14.02.2004. He further deposed that he received the proposal letter on 09.02.2004 under the signature of Branch Manager of Credit Cooperative Society. It has come in his further evidence that, the proposal letter was in his handwriting, except printed portion and he mentioned the date 14.02.2004 to 13.02.2005 in the presence of Manager of the Credit Cooperative Society. Suggestion that he was directed to take insurance with effect

from 09.02.2004 was denied by him. In his cross-examination done on behalf of the Insurance Company, it is reiterated that, one Cheque was issued for insurance of various vehicles and shops and the list was attached by him with the letter and for his own safety, he mentioned the dates. He did not remember as to whether the Cheque was sent by him through courier. It has further come that all the Insurance Policies were made effective from 14.02.2004 to 13.02.2005.

10. The Credit Co-operative Society examined its Branch Manager of Malegaon Branch as Witness No.2 below Exh.78. His evidence shows that on 09.02.2004 he was working as the Manager in the Credit Cooperative Society. He knew said Mr. S. K. Ladda. He had an occasion to meet him on 09.02.2004 as he had come to the Office of Credit Co-operative Society for purchase of Insurance Policy of some vehicles. His further evidence shows that, he purchased 18 insurance policies from the said Agent Mr. Ladda and issued the Cheque on 09.02.2004 towards amount of premium in lump sum. It has further come in his evidence that, the insurance of the vehicle involved in the accident in question was included in the lot of vehicles, for which insurance policies were purchased by him on 09.02.2004 and he asked Mr. Ladda to purchase policies with effect from 09.02.2004. The account extract showing payment of Cheque towards insurance premium is brought on record at Exh.79. The Cheque amounting to Rs.22,813/-

(Rs.Twenty Two Thousand Eight Hundred Thirteen) came to be issued and the balance amount in the account was Rs.13,19,889/- (Rs. Thirteen Lakh Nineteen Thousand Eight Hundred Eighty Nine). His further evidence show that, Exh.64 Proposal Form was shown to him and he deposed that, it bears his signature and it was issued by him on 09.02.2004 and it was in the handwriting of the Agent of the Insurance Company. He deposed that, it was not written in his presence and dates were not written in his presence. He deposed that, the dates are mentioned by the Agent as per his will. He reiterated that, Agent was not told to purchase insurance policies effective from some future date and the insurance in respect of all vehicles was to be purchased with effect from 09.02.2004. In his cross-examination, he denied that, it was their practice to issue blank forms with signatures to the insurance Agent for purchasing insurance policy.

11. Evaluation of the above referred evidence clearly goes to establish that, the insurance proposal form at Exh.64 and Cheque in the name of the Appellant were issued on 09.02.2004 by the Credit Co-operative Society for insurance of the vehicles which included the motorcycle involved in the accident. It is further established that, the said Proposal Form was received by the authorized Agent of the Insurance Company on 09.02.2004 itself. The suggestion is given in the cross-examination to the Witness No.2 of the Credit Cooperative Society

that, it was their practice to issue blank forms with signatures to the insurance Agent for purchasing insurance policy, establishes that blank spaces in the Proposal Form were filled in by the Insurance Agent. The evidence on record do not establish that, dates showing the period of insurance were either told by Credit Cooperative Society or it was filled by the Manager of Credit Co-operative Society. It is clearly established that on 09.02.2004 the proposal for insurance of the motorcycle involved in the accident along with the Cheque of premium in the name of Appellant were received by the authorized Agent of the Appellant. It is nobodies case that Mr. S. K. Ladda, examined as Witness No.1 by Credit Co-operative Society was not the authorized Agent of the Appellant. Though the period of insurance of the said Motorcycle shows that the insurance cover was from 14.02.2004 to 13.02.2005, the premium towards insurance policy of the Motorcycle was made on 09.02.2004 which was the date prior to the date of the accident i.e. 13.02.2004. It is not established by the Appellant that, the insurance period was as per the instructions of the Credit Co-operative Society. The learned Tribunal considered this aspect and rightly observed that, '*It is the date on which the premium is paid, is relevant for the purpose of finding out when contract of Insurance came in existence. If the premium is received on 09.02.2004, Insurance Cover Note ought to have been issued by the Insurance Company with effect from 09.02.2004. Merely because a future date is mentioned on the policy,* *Insurance Company cannot be allowed to deny its liability to pay compensation to the petitioners. From the evidence available on record, I have no hesitation in holding that contract of insurance came in existence on the date on which Insurance company has received the premium for policy from Respondent No. 3 – Society through its agent.'* As seen above, it has come in the evidence of witness examined by the Appellant that, the cover note can be issued by the Agent of the Insurance Company.

12. In the above referred Judgment in **Laxman Vithu Majik** *(supra)* the explanation of Section 64-VB of the Insurance Act, 1938 which pertains to the Premium in respect of the insurance is considered, which reads as under:

> '***64VB. No risk to be assumed unless premium is received in advance.***—
>
> *(1) ....*
> *(2) ....*
>
> *Explanation. —Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be."*

12.1. Further, Sub-section 4 of the said Section 64-VB of the said Insurance Act reads as under :

> *"(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or dispatch by post to, the insurer, the premium so collected in full without deduction of his commission within*

> *twenty-four hours of the collection excluding bank and postal holidays."*

13. From the evidence available on record, I find no merit in the submissions of the learned Advocate for the Appellant that, the Motorcycle involved in the accident was not insured on the date of the accident. The said finding of the learned Tribunal is based on the evidence available on record and is upheld. The contention of the learned Advocate for the Appellant that the observations in paragraph no.11 of the impugned Judgment in respect of appreciating the evidence of Mr. Ladda - the Insurance Agent that, '*he has specifically stated that he was not instructed by Respondent No.3 to purchase the policies with effect from 14.02.2004',* was perverse, has no merits, as the said observations are based on the evidence of Insurance Agent as seen from para no. 1 of his evidence.

14. The another contention of the learned Advocate for the Appellant is that, Deceased had borrowed the Motorcycle from his Owner for his own purpose and so, Deceased steps into the shoes of the Vehicle Owner and therefore, he cannot be the third party and was the permissive Driver or borrower of the Motorcycle and, therefore, the Appellant cannot be saddled with the liability. On the other hand, it is the contention of learned Advocate for the Claimants and Vehicle Owner that, the Insurance Policy of the Motorcycle was the Package /

Comprehensive Policy and so, even if the Deceased steps into shoes of the Motorcycle Owner, the Appellant cannot be absolved of its liability. He submitted that Deceased used said Motorcycle on the instructions of his Employer and, therefore, the contention that the Insurance Company will not be liable, is not sustainable.

15. In **United India Insurance Co. Ltd. vs. Anubai Gopichand Thakare and others, 2008 (1) MhLJ 73** cited by the learned Advocate for the Appellant, was the Appeal under the M.V. Act, wherein the expression '*third party*' under the M.V. Act is considered. It was observed that, '*the said expression needs to be determined in each case with reference to the terms of the Insurance Policy. If the risk of a person is covered under the contract of insurance, then he / she would be the third party regarding whom the insurance cover can be used and the insurer will be liable to indemnify such a person or his legal Representatives / dependents. However, the person, who is not covered under the terms of the Insurance Policy cannot be treated as 'third party' within the meaning of provisions of Section 147 and Section 149 of the M.V. Act.*'

16. In **Oriental Insurance Co. Ltd vs. Jhuma Saha (Smt.) and others (2007) 9 SCC 263** cited by the learned Advocate for the Appellant, was the Appeal against the decisions under the Claim Petition

under Section 166 of the M. V. Act. The question involved was that, '*the Deceased himself being negligent, the Claim Petition under Section 166 of the M.V. Act would be maintainable*'. In the facts of the said case, it was observed that, '*the additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147 (b) of the M. V. Act which in no uncertain terms covers a risk of a third party only would be attracted in the case*'.

17. In **Oriental Insurance Company Limited vs. Rajni Devi and Others, (2008) 5 SCC 736** cited by the learned Advocate for the Appellant, was the Appeal from the proceedings in the Application under Section 163-A of the M.V. Act. It is observed that, '*it is now a well settled principle of law that in a case where third party is involved, the liability of the Insurance Company would be unlimited. Where, however, compensation is claimed for the death of the owner or another passenger of the vehicle, the contract of Insurance being governed by the contract qua contract, the claim of the Insurance Company would depend upon the terms thereof.*' It was further observed that, '*liability under Section 163-A of the MV Act is on the owner of the Vehicle as a person cannot be both, a Claimant as also a recipient.*'

18. In **Ningamma and Another vs. United India Insurance Company Limited**, **(2009) 13 SCC 710** cited by the learned Advocate for

the Appellant, was the Appeal from the decision under the M. V. Act. In that case, Deceased borrowed the Motorcycle from his real owner for going to his native place. The Deceased while traveling on the Motorcycle, met with an accident. The Claim Petition under Section 163-A of the M.V. Act, 1988 was filed. The observations made in paragraph no.12 of the said Judgment shows that, the question that fell for consideration was, whether the legal representatives of a person, who was driving a motor vehicle, after borrowing it from the real owner meets with an accident without involving any other vehicle, would be entitled to compensation under Section 163-A of the M.V. Act or under any other provision (s) of law and also whether the insurer who issued the insurance policy would be bound to indemnify the Deceased or his Legal Representative?. On considering the provisions of Section 163-A of the M.V. Act and on appreciating the facts in that case, it was observed that, '*the Deceased was not owner of the motorbike in question and he borrowed the motorbike from its real owner and, therefore, the Deceased cannot be held to be an employee of the owner of the motorbike although he was authorized to drive the said vehicle by its owner and, therefore, he would step into the shoes of the Owner of the motorbike*'. It was further observed that, '*Deceased would step into the shoes of the owner of the vehicle*'.

19. In **Ramkhiladi and Another vs. United India Insurance Company and Another, (2020) 2 SCC 550** cited by the learned Advocate for the Appellant, was the Appeal from the proceedings under the M. V. Act. The claim was for accidental death under Section 163-A of the M.V. Act only against the Owner of the Motorcycle and its Insurance Company. One of the questions for consideration was that, '*the Deceased being in the shoes of the Owner of the Vehicle driven by himself, whether the Insurance Company of the vehicle driven by the Deceased himself would be liable to pay the compensation under Section 163-A of the Act? and the whether the Deceased not being a third party to the vehicle, being in the shoes of the owner can maintain the Claim under Section 163-A of the M.V. Act from the Owner of said vehicle?*'. It was observed that, '*it is true that in a claim under Section 163-A of the Act, there is no need for the Claimants to plead or establish the negligence and / or that the death in respect of which the Claim Petition was sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the Claim Petition under Section 163-A of the M.V. Act is based on the principle of no fault liability. However, at the same time, the Deceased has to be a third party and cannot maintain a claim under Section 163-A of the M. V. Act against the Owner and Insurer of the Vehicle which is borrowed by him as he will be in the shoes of the Owner and he cannot maintain a claim under Section 163-A of the M.V. Act against the Owner*

and Insurer of the vehicle. It was further observed that *'in the present case, the parties are governed by the contract of insurance and under the contract of insurance liability of the insurance company would be qua third Party only.* In the present case, as observed hereinabove*, the Deceased cannot be said to be a third party with respect to the insured vehicle'*. It is further observed that, *'there cannot be any dispute that the liability of the Insurance Company would be as per the terms and conditions of the contract of Insurance'.*

20. In **Yashpal Luthra & Anr vs. United India Insurance Co. Ltd & Anr, 2010 STPL 3282 Delhi**, cited by the learned Advocate for the Claimants, one of the issue involved therein was, '*whether under the comprehensive / package policy, the Insurance Company was liable to compensate for the death or Injury of the pillion rider on the two wheeler or the occupants in a private car'*. It was observed that, '*it is clear that the comprehensive / package policy of the two wheeler covers a pillion rider and comprehensive / package policy of a private car covers the occupants and where the vehicle is covered under the comprehensive / package policy, there is no need for Motor Accident Claims Tribunal to go into the question whether the Insurance Company is liable to compensate for the death or Injury of the pillion rider on two-wheeler or the occupants in a private car*'.

21. Coming to the case at hand, in paragraph no.2 of the impugned Judgment which sets out the facts of the case, it is observed that, the Deceased was deputed by Respondent No.1 i.e. Owner of Vehicle, *to bring certain amount from Sohel Shaikh, who was resident of Washim, it is stated that*, '*when Deceased had reached in front of Jaldhara Hotel, a buffalo suddenly appeared in front of the vehicle and Deceased lost his control over the vehicle. He died on the spot*'. Further, in paragraph No.17 of the impugned Judgment, it is observed that, '*the Deceased was deputed by the Owner for his own purpose and the Deceased was, therefore, acting as Agent of the Owner and in view of this fact, it cannot be said that the Deceased stands in the shoes of the Owner*'. It is further observed that *'distinction is slight, however, very material because a person who borrows the vehicle, borrows the risk involved in use of the vehicle along with the vehicle. However, when somebody is directed to perform some job, he is deputed for performing that work only and not to bear the consequential risk or liability in using such vehicle and therefore insurance company cannot be allowed to escape its liability of paying compensation to the Petitioners'.* The said observation made by the learned Tribunal that, 'the Deceased was deputed by the Owner for his own purpose and he was acting as the Agent of the Owner', finds no support from the pleadings and the evidence available on record. Minute scrutiny of the Claim Petition shows that, though in the original Claim Petition it is written in

handwriting in Paragraph No.14A that '*the Petitioners husband was deputed by Respondent No.1 i.e. owner of the vehicle to bring the account from Shoyab Shaikh, R/o. Washim',* in the Amended Petition there is no avernment in that regard. Further, the evidence Affidavit of Claimant No.1 i.e. Widow of Deceased, nowhere shows that, the Owner of the Vehicle had deputed Deceased for the work of Vehicle Owner. In the cross-examination done on behalf of Credit Cooperative Society, the Widow of Deceased deposed that, she knew as to whom the vehicle was belonging and the vehicle was standing in the name of one Pratap and Deceased left the house by saying that he was proceeding to Washim for attending party on account of birthday of his friend and he would be returning home late in the night. Admittedly, the Deceased was not working with or for the Motorcycle Owner. It is clear from the evidence of Witness No.2 - Bhikaji Sudamrao Patil examined by the Claimants that, Deceased was working as a Head Mechanic in one Ram Sales Services, Washim. In view of the clear evidence available on record, it is more than clear that Deceased borrowed the Motorcycle from his Owner i.e. Respondent No.4 in the Appeal / Respondent No.1 in the Claim Petition for his own use.

22. The another contention of the learned Advocate for the Appellant is that, Deceased was not holding the Driving Licence at the time of accident. The learned Advocate for the Claimants dispute the said contention.

23. The Record nowhere shows that the driving licence of Deceased was brought on record by the Appellant. There is also nowhere the case of the Claimants as seen from the Claim Petition and the evidence Affidavit of the Widow of Deceased that, Deceased was holding the valid and effective driving licence to drive the Motorcycle. On the contrary, in the cross-examination done by the Credit Co-operative Society it has come on record that her Husband did not possess valid and effective driving licence. From this, it is established that, Deceased was not holding the valid and effective driving licence to drive the Motorcycle. As regards the Insurance Policy of the said Motorcycle is concerned, it has clearly come in the evidence of Witness No.1 examined by the Appellant that, the policy below Exh.65 was the Comprehensive Policy. The complete policy papers are not brought on record by any of the parties. The said Exh.65 is the Certificate of Insurance. The clause in the said Exh.65 under the caption *'persons or classes of Persons entitled to drive'* speaks that *'any person including insured provided that a person driving holds an effective driving licence at the time of the accident and …..'.* One of the pleadings in the Written-statement filed by the Appellant was that, the Insurance Company was not liable to pay any compensation unless and until it is proved that, the person on the wheels was having a valid and effective driving licence to drive such vehicle and vehicle was roadworthy to ply.

This shows that there was breach of terms and conditions of the Insurance Policy of the Motorcycle.

24. Considering the other aspects, there is no serious dispute in respect of monthly income of Deceased at the rate of Rs.3,000/- (Rs. Three Thousand) per month which is accepted by the learned Tribunal. It is needless to state that the Claim Petition being under Section 163-A of the M.V. Act, the Claimants were not duty bound to prove the aspect of negligence. There is no dispute in respect of computation of the total compensation awarded by the learned Tribunal to the Claimants as against the Appellant and the Vehicle Owner i.e. Respondent No.4 in the Appeal and Respondent No.1 in the Claim Petition.

25. In light of the above factual aspects and the evidence available on record, the Appellant cannot be held jointly and severally liable to pay the compensation to the Claimants. Their being clear breach of the terms and conditions of the Insurance Policy, the Appellant is entitled to be absolved from payment of liability and it is the Motorcycle Owner i.e. Respondent No.4 in the Appeal and Respondent No.1 in the Claim Petition, who shall be liable to pay the compensation to the Claimants awarded by the learned Tribunal. However, considering that, the Insurance Policy was comprehensive in nature, the Appellant shall pay the compensation as computed by the learned

Tribunal along with Interest, to the Claimants and thereafter it would be at liberty to recover the same from the Motorcycle Owner i.e. Respondent No.4 in the Appeal /Respondent No.1 in the Claim Petition. Hence, the following order:

ORDER

(i) The Appeal is partly allowed with no order as to costs.

(ii) The impugned Judgment and Award is modified to the following extent :

(a) The Motorcycle Owner i.e. Respondent No. 4 in the Appeal / Respondent No. 1 in the Claim Petition shall be liable to pay the compensation to the Claimants, computed by the learned Tribunal.

(b) The Appellant – Insurance Company shall pay the amount of compensation to the Claimants as directed by the learned Tribunal and thereafter, it would be at liberty to recover the same from the Motorcycle Owner i.e. Respondent No.4 in the Appeal / Respondent No.1 in the Claim Petition, in accordance with law.

(iii) The Claimants are at liberty to withdraw the amount under the Award deposited by the Appellant – Insurance Company with interest accrued thereon. The excess amount, if any, be refunded to the Appellant – Insurance Company.

(iv) The Record and Proceedings be sent back to the learned Tribunal.

(NEERAJ P. DHOTE, J.)

GGP