IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 85 OF 2011
WITH CIVIL APPLICATION NO. 564 OF 2011

United India Insurance Company Ltd.,
Through its Divisional Manager,
Osmanpura, Aurangabad ...Appellant

Versus

1. Mangal w/o Raju Tambe,
Age: 33 years, Occu: Household,
R/o Kokanwadi, Station Road, Aurangabad.

2. Pawan S/o Raju Tambe,
Age: 15 years, Occu: Student,

3. Kiran S/o Raju Tambe,
Age: 13 years, Occu: Student,

4. Arjun S/o Raju Tambe,
Age: 10 year, Occu: Student.

Respondent Nos. 2 to 4 are minors,
U/g of respondent no. 1 real mother

5. Narmadabai W/o Pandharinath Tambe,
Age: 53 years, Occu: Household,
R/o. As above.

6. Shaikh Moin S/o Shaikh Gani,
Age: Major, Occu: Driver,
R/o. Jahagirdar Colony, Opp. RTO Office,
Station Road, Aurangabad.

7. Abdul Razzak S/o Adamji Mohammad Motiwala,
Age: 63 years, Occu. Business,
R/o As above. ...Respondents

(Resp. Nos. 1 to 5 Original Claimants
Resp Nos. 6 & 7 Orig. Resp. Nos. 1 & 2)

- Mr. A. G. Kanade, Advocate for the Appellant
- Mr. A. M. Nagarkar, Advocate for the Respondent Nos. 1 to 5

CORAM : ABHAY S. WAGHWASE, J
RESERVED ON : NOVEMBER 27, 2025
PRONOUNCED ON : DECEMBER 01, 2025

JUDGMENT :

1. In this Appeal filed by Appellant Insurance Company, there is challenge to judgment and award passed by learned MACT, Aurangabad in MACP No. 823/2007 dated 04.10.2010.

2. In nutshell, claimant nos. 1 to 5 are heirs of one deceased Raju Tambe who was allegedly traveling in auto rickshaw on 30.07.2007. Said auto rickshaw was given dash by truck bearing no. MWP-1621. In the fatal injuries, he died and, therefore, crime was registered against truck driver bearing no. I-302/2007 for offence under section 279, 304-A, 337 & 338 of Indian Penal Code. Therefore, heirs of deceased Raju Tambe set up accident claim petition to the tune of Rs.5,00,000/- under various heads on the ground of losing source of income.

3. In the claim petition, respondent nos. 1 to 3 caused appearance. Respondent nos. 1 and 2 failed to file written statement and contest the petition and, therefore, matter proceeded ex parte against both of them.

Insurance company original respondent No. 3 contested the claim by filing written statement at exhibit 20 on the ground that driver of the truck was not holding valid license and secondly, there was no insurance policy in existence on the date and time of accident and, therefore, insurance company to be not liable for want of coverage itself.

After appreciating the respective cases of each of the parties, learned Tribunal allowed the claim petition by awarding compensation to the tune of Rs. 5,67,000/- with 9% rate of interest.

Feeling aggrieved by the above, insurance company has preferred instant appeal on various grounds raised in the appeal memo.

4. Learned counsel for appellant insurance company would point out that alleged accident dated 30.07.2007 as per report had taken place at around 12.00 noon. However, policy has been applied for on same day but at 03.30 pm i.e. subsequent to the accident. Thus, he strenuously submitted that at the time of accident, there was no policy with the truck owner so as to indemnify any claim. Learned counsel invited attention of the Court to the policy at exhibit 27 and specifically invited attention of this Court to exhibits A and B and would submit that, it is apparently clear that, premium was paid at 15.23 hours i.e. post occurrence of accident. He also pointed out that, tenure of the policy was from 31.07.2007 to 30.07.2008 and, therefore, according to him, for the alleged mishap dated 30.07.2007 at 12.00 noon, there being no privity of contract between owner of the truck and the insurance company, appellant is not liable. In support of such contentions, he seeks reliance on the judgment of Hon’ble Apex court in the ***National Insurance Co. Ltd vs. Sobina Iakai and Others***, reported in 2007

STPCL 13532 SC : (2007) 7 SCC 786.

5. Learned counsel for respondents would support the impugned judgment and award and in the alternative, would submit that, if at all the Court is convinced that insurance company had not indemnify the offending vehicle, then he urges to pass pay and recover order.

6. In light of above submissions, visited the record and papers. First information report exhibit 23 clearly shows that crime is registered on 30.07.2007 at 12.15 hours regarding of accident taking place at 12.00 noon. Exhibit B appended to the appeal memo goes to show that, policy is applied and drawn by one Abdul Razzak Motiwala at 15.23 hours i.e. 03.23 p.m. Exhibit A is the policy cover and its tenure is from 00.00 hours of 31.07.2007 till midnight of 30.07.2008. As stated above, there is force in the submission of learned counsel for appellant that at the time of accident in question, there was no policy coverage in existence and as such, insurance company cannot be made to indemnify when there was no privity of contract between the insurer and insured.

7. In the citation relied, Hon'ble Apex Court held that "*insurer not liable to pay compensation for a period when insurance was not in existence – Insurer held not liable*". Learned Tribunal failed to consider and appreciate the same and, therefore, interference is required to be called for.

8. In view of above discussion, appellant succeeds. However, in view of the fact that the Insurance Company has already deposited the amount of compensation, no purpose would be served to permit Appellant Insurance Company to withdraw the said amount and drive the claimants to another round of litigation to recover the compensation awarded from the original respondent nos. 1 and 2. Hence, I proceed to pass following order:

ORDER

I. First Appeal is allowed.

II. Impugned judgment and award dated 04.10.2010 passed by MACT, Aurangabad in MACP No. 823/2007 stands modified.

III. It is held that Appellant Insurance Company could not be held liable to pay the compensation and the same is exonerated from the liability. However, it shall first pay compensation to original claimants and then is entitled to recover the same from original respondent nos. 1 and 2 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 Appeal is disposed of in above terms.

VIII. Pending civil application(s), if any, stands disposed of.

(ABHAY S. WAGHWASE, J.)

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