IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 5107 OF 2017

The New India Assurance Company Ltd.
Through its Authorized Official &
Divisional Manager, Legal Hub, Adalat Road,
Aurangabad. **... Appellant**
(Orig. Resp. No.3)

Versus

1. Mukta wd/o Raghunath Ingle,
Age : 30 years, Occu. : Household,
R/o. Shirodi, Tq. Kannad, Dist. Aurangabad.

2. Ankush @ Swanand S/o. Raghunath Ingle,
Age : 11 years, Occu. : Education,
R/o. As above (u/g of Resp. No.1.)

3. Swati d/o.. Raghunath Ingle,
Age : 6 years, Occu. : Education,
R/o. As above (u/g of Resp. No.1) ... Orig. claimants

4. Bhausaheb s/o. Damu Parkhe,
Age : Major, Occu. : Owner,
R/o. Kalnad, Tq. Niphad, Dist. Nashik

5. Ajinath S/o Babasaheb Ingle,
Age : Major, Occu. : Driver.
Shirodi, Tq. Kannad, Dist.Aurangabad. **... Respondents.**

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Mr. A. S. Usmanpurkar, Advocate for Appellant-Insurance Company
Mr. A. R. Syed h/f. Mr. B. N. Gadegaonkar, Advocate for Respondent Nos.1 to 3

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 19 NOVEMBER 2025
PRONOUNCED ON : 01 DECEMBER 2025

JUDGMENT :

1. Dissatisfied by the judgment and award dated 13.09.2017 passed by learned Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 497 of 2013, insurance company has come up in appeal.

2. In nutshell, M.A.C.P. No. 497 of 2013 came to be instituted by heirs of deceased Raghunath, who was allegedly traveling in a truck bearing MH-15-B-1951 on 27.01.2013. It is alleged that the driver drove the truck in rash and negligent manner and had applied urgent break, as a result of which, Raghunath who was sitting at the seat of cleaner, fell down from the truck and suffered head injury and succumbed to the same.

In above premises, by invoking section 166 of Motor Vehicles Act, heirs of Raghunath filed above claim to the tune of Rs.10,00,000/-.

The said claim petition was contested by all respondents i.e. owner, driver and insurance company (present appellant). After appreciating the oral and documentary evidence, the learned tribunal by order dated 13.09.2017, partly allowed the claim directing all three respondents to jointly and severally pay compensation to the tune of Rs.7,37,100/- along with interest at the rate of 6% per annum.

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

3. Learned counsel for insurance company apart from placing on record written notes of arguments would submit that impugned judgment and award is illegal, not sustainable and liable to be set aside. He pointed out that, findings reached at by learned tribunal, are contrary to the record. According to him, insurance company had taken a specific plea that there were breach of conditions of policy and deceased Raghunath was admittedly a gratuitous passenger, and therefore, truck insured by them was not liable as no coverage was taken for gratuitous passenger and that neither deceased was owner of any goods nor was in employment of the truck owner. He pointed out that, in written statement, insurance company had taken a specific plea to the above extent at Exh.11, however same has not been correctly considered and appreciated and on the sole ground that insurance company did not plea to the above extent, allowed the same by directing even insurance company to contribute the compensation along with original respondent nos.1 and 2. He would further point out that, learned tribunal also failed to consider the nature of the policy i.e. it to be TP cover policy and therefore no passenger except driver of the truck was permitted to occupy the truck. He further submitted that, even there was no registration

permit and fitness of the offending vehicle on the date of accident, but even same has not been considered by the tribunal. Lastly, even for want of evidence on earnings of deceased, quantum awarded by trial court is taken exception to.

4. Learned counsel for respondents would support the judgment and award of learned trial court and would urge not to disturb the same.

5. After hearing submissions of both sides, there is no dispute that, deceased Raghunath was traveling in the truck bearing No. MH-15-B-1951. There is no dispute that, the vehicle was goods vehicle. Claimants themselves have asserted that Raghunath was traveling in the said truck and it is not clarified by them in what capacity. Therefore, when there is nothing to show that he was traveling on behalf of the owner of the truck or to be owner of the goods and articles, obviously he was traveling as a gratuitous passenger.

6. Learned counsel for insurance company has specifically pointed out that, being a gratuitous passenger and as journey was undertaken in a goods truck by Raghunath, insurance company was not liable to compensate claimants for death of Raghunath, who fell on his own accord without there being any collusion.

7. He very emphatically submitted that even specific plea to that extent was in the written statement. Even learned trial court, in paragraph no.9, while assessing written statement of original respondent no.3 insurance company specifically mentioned that the deceased was gratuitous passenger in goods carrying vehicle at the time of accident, but the same is not considered and as pointed out, in paragraph no.25, learned tribunal has observed that insurance company did not raise plea to that extent.

8. On visiting Exh.11, one does come across specific plea raised by insurance company that deceased being gratuitous passenger, insurance company is not liable. Therefore, as pointed out, insurance company was not liable in view of the nature of policy.

9. Learned counsel for appellant has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Oriental Insurance Co. Ltd. v. Premlata Shukla and Ors.***, [2007 AIR SCW 3591], on the point that gratuitous passenger is not entitled for compensation.

10. The Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Baljeet Kaur and Ors.*** [(2004) 2 SCC 1], while

deciding question whether an insurance company in respect of a goods vehicle is expected to cover gratuitous passenger, after dealing with the legislative amendment carried out to provision under section 147 of the M.V. Act and after considering the previous judicial pronouncements, had reached to the conclusion that, insurance company is not liable as the risk of unauthorized passenger in a goods vehicle or gratuitous passenger, are not covered under the policy, and that it amounts to breach of policy by carrying the passenger in a goods vehicle, only the owner of the vehicle is liable.

11. Here, Raghunath has suffered death on account of fall from the truck. There is specific plea that in view of the nature of policy and there being breach of policy on account of permitting passenger to travel in a goods vehicle, insurance company is not liable. However, in above referred judgment, the Hon'ble Apex Court has directed that the interest of justice would be subserved, if insurance company is directed to satisfy the award in favour of the claimant, if not already satisfied and recover the same from the owner of the vehicle.

12. Therefore, here, also in the interest of justice, similar direction would subserve the purpose of justice. Hence, the following order is passed :

ORDER

(i) The First Appeal is allowed.

(ii) Impugned judgment and award dated 13.09.2017 passed by learned Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 497 of 2013 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 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 First Appeal is disposed of in above terms.

(ABHAY S. WAGHWASE, J.)

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