IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO. 931 OF 2016

Branch Manager
United Insurance India Company Ltd.,
Shree Radhe Building, Ashirwad Nagar,
Chowk, Chamorshi Road, Gadchiroli ... Appellant

Versus

1 Smt. Geetabai wd/o Gangadhar Uikey
Aged about 34 years, Occ. Houswife,

2 Ku. Prachi d/o Gangadhar Uikey
Aged about 14 years, Occ. Education

3 Ku. Ankita d/o Gangadhar Uikey
Aged about 11 years, Occ. Education

4 Tejas s/o Gangadhar Uikey
Aged about 06 years, Occ. Nil (N.A. Nos.2, 3 & 4 minors through their natural guardian mother N.A. No.1)
All R/o. Arattondi, Tah. Kurkheda,
Dist. Gadchiroli ... Respondents

5 Digambar Rajaram Patne
Age about – Major, Occ. Driver,
R/o. Dewulgaon, Tah. Kurkheda,
District – Gadchiroli

Mr. B.P. Bhatt, Advocate for appellant.
Mr. P.J. Mehta, Advocate for respondent Nos.1 to 4.

CORAM : PRAVIN S. PATIL, J.
DATE : 01.12.2025

ORAL JUDGMENT:

Heard Mr. Bhatt, learned counsel for the appellant as well as respondent Nos.1 to 4.

(2) The appellant – Insurance Company challenging the judgment and order passed by the Motor Accident Claims Tribunal, Gadchiroli, in MACP No.72/2011 dated 11.11.2014 stating that as per the policy which was placed on record before the learned Claims Tribunal and admittedly, same being a act/liability policy, the responsibility of Insurance Company is limited to pay compensation of Rs.1,00,000/- (Rs. One Lakh), however, the learned Tribunal has directed to pay compensation of Rs.3,94,000/-. Hence, the appellant – Insurance Company approached before this Court by way of the present appeal.

(3) The undisputed facts of the present matter are that the deceased Gangadhar, who was driving the motorcycle and was travelling from Manewada to Jaisingtola, lost his control of the bike and fell down from vehicle and caused severe injuries and thereby succumbed to his injury.

(4) The legal heirs of Gangadhar filed the application for compensation before the Motor Accident Claims Tribunal, Gadchiroli. According to them, the motorcycle was belonging to the respondent No.1, and it was insured with the appellant – Insurance Company. Hence, according to them, the owner and the Insurance Company are responsible and liable to pay the compensation to them.

(5) The appellant - Insurance Company appeared before the Claims Tribunal and filed their written statement on 05.09.2011. In their written statement, it is not clearly mentioned that their responsibility as per the terms of the policy is restricted to Rs.1,00,000/- (Rs. One Lakh only).

(6) In the light of this factual position, the legal heirs entered into the witness box and reiterated their case before the learned Tribunal. No one entered into the witness box on behalf of the Insurance Company. In the background of this factual position, the learned Tribunal has decided the claim petition. The learned Tribunal has recorded the findings that the insurance policy, which was proved as Exhibit 40, discloses that the vehicle was insured. It is further recorded that as the deceased was driving the said vehicle, not in the capacity of owner, therefore, the third-party insurance policy is applicable to the present case. Hence, on this count, held that the Insurance Company is responsible to pay the entire compensation of Rs.3,94,000/- along with the owner of the vehicle.

(7) In the present appeal, it is the submission of the appellant that if the deceased was driving the said vehicle, the same is to be presumed to have borrowed from the owner of the vehicle, and therefore, the deceased entered into the shoes of the owner and therefore, the policy against such

borrower cannot be treated as a third-party insurance policy.

(8) In support of the submission, the learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ningamma and anr. Vs. United India Insurance Co. Ltd.,*** reported in ***2009 ACJ 2020***, wherein the Hon'ble Supreme Court, it is held that in the said judgment of the Hon'ble Supreme Court vide dealing with the issue, whether a claim application for the death of the borrower of a vehicle is maintainable under Section 163(A) and answered, the same in the negative. In the said judgment, observed in para 18 as under :

> *"18. In the case of Oriental Insurance Company Ltd. v. Rajni Devi and Others, 2008 ACJ 1441, wherein one of us, namely, Hon'ble Justice S.B. Sinha was a party, it has been categorically held that in a case where third party is involved, the liability of the insurance company would be unlimited. It was also held in the said decision that 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 claimant against the insurance company would depend upon the terms thereof. It was held in the said decision that Section 163-A of the MVA cannot be said to have any application in respect of an accident wherein the owner of the motor vehicle himself is involved. The decision further held that the question is no longer res integra. The liability under section 163-A of the MVA is on the owner of the vehicle. So a person cannot be both, a claimant as also a recipient, with respect to claim. Therefore, the heirs of the deceased could not have maintained a claim in terms of Section 163-A of the MVA. In our considered opinion, the ratio of the aforesaid decision is clearly applicable to the facts of the present case. In the present case, the deceased was not the owner of the motorbike in question. He borrowed the said motorbike*

> *from its real owner. The deceased cannot be held to be employee of the owner of the motorbike although he was to drive the said vehicle by its owner, and therefore, he would step into the shoes of the owner of the motorbike."*

(9) As such, on the basis of this judgment, it is the submission of the appellant that once it is established that the vehicle was driven by a person who borrowed the same from the owner, he stepped into the shoes of the owner of the motorbike and in that case, as per the policy, the Insurance Company is responsible for the restricted amount.

(10) In support of this submission, the appellant has also relied upon the judgment of the co-ordinate bench of this Court reported in ***2019, ACJ 3028,*** in the case of ***Divisional Manager, United India Insurance Co. Ltd., Vs. Vijaya and Ors.,*** wherein this Court has also held that in such cases, the Insurance Company is responsible for a restricted amount of compensation, i.e. Rs.1,00,000/- (Rs. One Lakh).

(11) *Per contra*, the learned counsel for the respondents/claimants has heavily relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Manjusha and Ors. Vs. United India Assurance Company Limited and anr.*** reported in ***2025 SCC OnLine SC 1512***. It is the submission of the respondent that unless there is a specific pleading on the part of the Insurance Company in their written statement alleging that, in view of the terms of the policy, their responsibility is limited, the learned Tribunal, as well as the High Court, is not required to look into such issue in the matter. According to them, in the present appeal also before the Claims Tribunal, no specific stand was taken by the appellant - Insurance Company, so also, in the present appeal, no specific ground has been raised to state that the Insurance Company has a limited responsibility to pay the compensation amount. Therefore, in the absence of specific pleading, they cannot be allowed to raise the grievance first time before this Court in the matter.

(12) In light of the submission of both parties, I have perused the judgment of the Claim Tribunal as well as the grounds of appeal memo filed before this Court. The grounds raised by the appellant in the present appeal particularly ground (V), according to me, is very specific and for the perusal, the same is reproduced as under :

> *"(V) The Learned Member of the Tribunal did not considered the settled principles of law when the policy was issued Act liability only then the occupant of the vehicle is not covered under the policy and only the third party risk is covered and deceased cannot be third party when the deceased himself was driving motor cycle. Therefore, the Tribunal without any application of mind exercise the jurisdiction in a arbitrary and perverse manner. Therefore, at any cost the Judgment and Award passed by the Tribunal is not legally sustainable."*

(13) In the present case, the copy of the policy was very much produced before the Claims Tribunal, and the same was exhibited as Exhibit 40. The perusal of the said policy itself demonstrates that the Insurance Company is having a limited responsibility to pay the compensation. So also, the grounds which are reproduced above also, in unequivocal terms, states that the occupant of the vehicle is not covered under the policy, and only the third party risk is covered. According to me, the occupant herein is the deceased, who has borrowed the vehicle and entered into the shoes of the owner and therefore, the findings of the learned Tribunal, the third-party insurance policy is applicable is certainly illegal and thereby directing Insurance Company to pay entire compensation amount is not justified in the matter. In the circumstances, I am of the opinion that the judgment relied on by the respondent of the Hon'ble Supreme Court in the case of *Manjusha (supra)* is not applicable in the matter.

(14) The appellant has specifically relied upon the judgment of the Hon'ble Supreme Court in the case of ***Ningamma and anr. Vs. United India Insurance Co. Ltd., (supra)***, the said principle is clearly applicable in the present matter. So also the terms and conditions of the insurance policy are very much clear and was available before me, and therefore, the same cannot be denied in the facts and circumstances of the matter.

(15) In light of above said observations, I am of the opinion that there is a need for modification to the order of the learned Motor Accident Claims Tribunal, Gadchiroli, dated 11.11.2014. Hence, I proceed to pass the following order :

ORDER

(i) The appeal is partly allowed.

(iii) The judgment and order passed by the learned Motor Accident Claims Tribunal, Gadchiroli dated 11.11.2014 in MACP No.72/2011 is modified to the extent that out of Rs.3,94,000/- awarded by the Claims Tribunal, appellant – Insurance Company is responsible to pay Rs.1,00,000/- along with 9% interest thereon from the date of accident till its full realisation and respondent No.5 is responsible to pay remaining amount to respondent Nos.1 to 4.

(iii) The registry of this Court is directed to release the compensation amount as determined by this Court to the respondent out of the amount which is already deposited by appellant with the registry of this Court and remaining balance amount be reimbursed to the appellant - Insurance Company subject to satisfaction of the registry.

[PRAVIN S. PATIL, J.]

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